INTERPRETATION OF INDIAN STATUTES

AND OF THE

GOVERNMENT OF INDIA ACT, 1935

from
Prof. V.K.N. Menon.

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PREFACE.

It may at first sight appear somewhat presumptuous to attempt to write a treatise on Interpretation of Statutes when such excellent Standard English books as Maxwell and Craies hold the field in the legal world even to-day. On a second thought, however, it would seem that such an undertaking is neither fruitless nor superfluous. The object of the present work is not to supplant but supplement the classical works extant on the subject and to enable the better application of the principles enunciated in those books suitably modified and adapted to Indian needs and conditions. Further as pointed out by a former editor of Maxwell's Interpretation of Statutes, the achievement of that great work consists almost entirely in the illustration of the leading principles of interpretation by "a wealth of authority" and it may easily be imagined that a book containing examples drawn from Indian decisions based on Indian Statutes is likely to be more useful to Indian Lawyers and Judges than one abounding in illustrations based on English Statutes some of which may be obscure and not all of which are within the easy reach of the ordinary Indian lawyer. Lastly it should be remembered that the English principles of Interpretation are applied in Indian Courts and by the Privy Council more on grounds of justice, equity and good

conscience than on their being applicable directl
as such and accordingly the Indian decisions
have borrowed and assimilated the rules of Inter
tion of other systems of law into the jurisprude
this country are of greater value as direct autho
than foreign decisions and analogies. I have
fore felt that a book based on such case-law is lik
be of considerable use to practising lawyers in
country. Added to this, the outstanding fact re
that during the last three decades the volume of
law on this important subject has grown suffic
large to be capable of forming a substantial nucle
the attempt of an Indian work on the La
Interpretation.

The method followed in this work has be
enunciate the main principles of interpretation a
down in the leading English decisions and the E
Text Books on the subject to the extent they hav
adopted and followed by the highest judiciary i
country and to illustrate the same from the dec
of the Privy Council and of the several High
in India pointing out wherever necessary any
ences in the approach of the subject betwee
English and Indian Courts of justice. The
work is divided into separate books each one of
is allotted to a particular branch of the law, th
of the books being devoted to a study of the prin
of interpretation of constitution statutes with s
reference to the Government of India Act, 1935
chapter is also added on the Doctrine of *Ultra*
which is assuming so much importance nowaday
merely in the higher Courts of this country but e
the mofussil courts on account of the increasing

tory law enacted by the Provincial Legislatures after the advent of Provincial Autonomy granted under the Government of India Act, 1935. On the whole the work represents an earnest attempt to study the law of Interpretation of Statutes from the Indian point of view and to re-arrange under proper heads the well-recognised principles of an important branch of law with due regard to the course of Indian decisions for the last half a century. Besides the English Interpretation Act and the General Clauses Acts, I have added a commentary on the more important subjects included in the Legislative Lists in Schedule VII of the Government of India Act, 1935, embodying therein the latest decisions on the several items in that schedule.

I am perfectly aware of the obvious limitations and imperfections that a work such as the one undertaken by me is subject to, but I earnestly hope the indulgent reader will view this more as a stimulus to the study of a partly neglected but an important branch of law rather than as a standard work on a difficult legal subject and take to it in that kindly and sympathetic spirit to which it is entitled.

I desire to acknowledge my debt of gratitude not merely to the standard English works on Interpretation such as Maxwell's Interpretation of Statutes, Craies on Statutes Law and Beal on the Cardinal Rules of Interpretation but to the several other works to which reference has been made in the course of the work in the footnotes appended to the same.

My thanks are due to Mr. R. Narayanaswami Ayyar, Proprietor, Madras Law Journal, for having

consented to print and publish the work and for h ig
brought it out early in a neat and attractive forn

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Vizagapatam,
30*th April,* 1940.

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INTRODUCTORY.

The necessity for interpreting laws is as old as the laws themselves and occurs in almost every system of jurisprudence. In the history of all civilized nations the necessity for codification of laws was felt very early in their history and a study of the first principles founded on reason, public convenience and necessity became a natural consequence. As the Roman Jurisprudence commenced with the Twelve Tables, and the Code of Justinian the Hindu system of jurisprudence which according to Mayne has 'the oldest pedigree of any known system of jurisprudence' began with the Manusmriti or the Ordinances of Manu. Several of the rules of interpretation under Roman Law took the forms of Maxims which are collected in standard works and dictionaries like Broom's Legal Maxims and Wharton's Law Lexicon and are frequently quoted and relied upon by Judges even in modern times in support of their conclusions. The Hindu system of jurisprudence again contains its own principles of exposition and as has been pointed out by the Privy Council questions arising under it cannot be determined on abstract reasoning or analogies borrowed from other systems of law but only on the rules and doctrines enunciated by its own law-givers and recognized expounders. Thus provision was made in the ancient law books for cases where there was a conflict of texts in the Shrutis themselves or between the Shrutis and the Smritis the two most authoritative sources of Hindu Law. For instance Manu ordains that where two Shruti texts are mutually contradictory, both are right and they should be treated

as alternatives to be followed at the option of an
vidual.[1] Gautama enjoins the rejection of a S
which is in conflict with a Shruti, and of a cu
which is in conflict with a Smriti and lays down
superiority of the Manu Smriti to others which
be in conflict with the former, in its title to recogn
and acceptance. Brihaspati declares that the
elaborate of two texts expressed in two different f
occurring in two equally authoritative texts shoul
followed. Viramitrodaya lays down that as bet
a text of doubtful import and another of clear si
cation relating to the same matter the latter ough
be preferred and that what occurs in the concluding
tence gives way to what appears in the opening sente
It further lays down that if one text is more dif
and obscure than another the latter ought to be pr
red and that the general is superseded by the particu
Yajnavalkya expresses the opinion that a text whi
more in consonance with equity and reason ough
carry greater weight than one which is unreasonabl
opposed to equity.[4] The ingenuity of the comme
tors increased the rules of interpretation and in co
of time they became the subject of separate trea
like the Mimamsa Rules of Interpretation and
Karakas and Adhikaranas of Bhattapada and Ma
vacharya partly based on grammar but partly als
rules applicable to Vyavahara or the Civil Law.

2. By far the most important of such an
treatises on Interpretation is Jaimini's Mima

(1) Manu Lect. 2, 14, also Ganganath Jha, Hindu Law in its
ces, p. 48.
(2) Ganganath Jha, pp. 44 and 45.
(3) *Ibid*, p. 45.
(4) Yajn. 11, 21.

which is assigned to about the sixth Century before the Christian Era. The Mimamsa is primarily concerned with the interpretation of the ritual in the Vedic texts and the reconciliation between conflicting explanations of the same by the different commentators but it was not on that ground the less applicable to Civil Law especially as under the Hindu Law the distinction between rules of positive law and religious and moral precepts or between temporal and spiritual law was little marked in ancient times and the Dharma connoted much more than mere positive law and embraced religion and morality as well within its wide signification. The Mimamsa is explained by Mr. Colebrook thus: 'A case is proposed either specified in Jaimini's text or supplied by his Scholiasts. Upon this doubt, or question is raised and a solution of it is suggested which is refuted and a correct conclusion is established in its stead'. The three parts of the system consist thus in taking up of a proposition to be discussed and applying principles of logic to it, by taking the Purvapaksha the *prima facie* and wrong view at first, then the Uttarapaksha or a refutation of the erroneous view and ultimately arriving at the correct conclusion or the Siddhanta to be established. 'The logic of the Mimamsa', says Colebrook, 'is the logic of the law—the rule of interpretation of civil and religious ordinances. Each case is examined and determined on general principles and from the cases decided the principles may be collected; a well ordered arrangement of them would constitute a philosophy of the law and this is in truth what has been attempted in the Mimamsa'[5] Professor Max Muller also points out that the Mimam-

(5) K. L. Sarkar, Mimamsa Rules of Interpretation, T.L.L. 1905.

sa method of discussing questions was adopted b highest legal authorities in the settlement of cc cated questions of law[6] and Dr. Thibaut is of the opinion. That these principles were applied i administration of Civil or Vyavahara Law appear from the fact that it was ordained that King's Court was to be assisted by assessors who learned Brahmins one of whose chief qualifications the acquaintance with the Sacred Law including of Mimamsa Interpretation. Vasista mentions t popular Assembly or Court was to consist of ten bers made up of four students of the four Vedas who knows the Mimamsa one who knows the Ang teacher of the Sacred Law and three eminent men are in three different orders. It would thus be clear that the paramount importance of rules of i pretation in the administration of justice was reco ed from the earliest times and the same conti through the Budhistic period and was hardly inte red with in the Muhammadan or Mogul peri Mr. Kisore Lal Sarkar in his able exposition of Rules of Interpretation[8] has not only pointed out several of the accepted rules of interpretatio vogue at the present day were anticipated by the cient Rishi Jaimini, but claims that the ancient b are sometimes even more clear and more logical in treatment of the subject than the standard treatise the subject at the present day. Thus the golden ru construction, the rule of the popular or technical m ing, the rule of construction consonant with gram

(6) The Six Systems of Indian Philosophy, Max Muller.
(7) K. L. Sarkar, Mimamsa Rules T.L.L. 1905.
(8) Tagore Law Lectures, 1905.

the rule of departure from the ordinary and natural meaning on grounds based on history, the genesis of an enactment, its context or the consequences flowing from a particular interpretation, all find their counter parts in the ancient works on Interpretation in the principles of (1) Shruti, (2) Linga, (3) Vakya, and (4) Prakarana in the ancient rules of interpretation.[9] The Shruti is based on the principle that when the meaning is complete and explicit in sense and grammar it should not be strained or twisted. The Linga enjoins the determination of the technical meaning of a word or expression which has more than one meaning and whose natural and ordinary meaning does not agree with its context, by reference to such context or the other parts of a statute. The Vakya principle enables a grammatical joinder where the words, or sentences in a text are not connected properly so as to make out a clear meaning and the Prakarana directs that in cases where the meaning appears to be plain and the expression clear and grammatical in itself but the same conveys no sense, it should be read with other allied passages in a work with due regard to the nature of the subject.[10] There are besides several axioms contained in the ancient Hindu Law books which not only bear great similarity to Roman and English Rules of Interpretation of a much later date but prove beyond doubt that the Law of Interpretation was studied in a more scientific spirit and had attained a greater degree of perfection than obtains at the present day. As pointed out by the same learned author, Mr. Sarkar, the *Sarthakya* axiom that every word and sentence

(9) Jaimini, III: *iii*: 14.

(10) Kisore Lal Sarkar, Mimamsa Rules, T.L.L. p. 6.

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(9) Jaimini, III: *iii*: 14.

(10) Kisore Lal Sarkar, Mimamsa Rules, T.L.L. p. 6.

should have a specific meaning and purpose the *Laghu* axiom that more rules should not be framed than nec sary, the *Arthaikatwa* axiom enjoining the attach of the same meaning to words at one and the sa place, the *Gunapradhana* axiom dealing with the justment or reconciliation of a principal idea and subordinate idea where they are in conflict with ea other the *Samanjasya* axiom that lays down that c tradiction between words and sentences ought not to assumed but an attempt should always be made avoid such conflict and bring about a reconciliati between them and the *Vikalpa* axiom enabling one two meanings to be adopted where either is possi and the *Anarthakya* maxim that no construction sho attribute a meaninglessness to any word or expressi in a passage all bear a surprising similarity to t modern doctrines of interpretation enunciated Maxwell and Craies.[11] The analysis of these rules interpretation into elementary rules called axioms a the more complicated rules into principles of Interp tation obtaining in the Mimamsa is one which deserv to be adopted even by modern writers on Laws Interpretation.

3. The secularization of the ancient dharma a the delimitation of Hindu Law in its actual administ tion to only a fraction of the Vyavahara Law of t Smritis have rendered the Mimamsa rules of doubtf utility and of rare application as such except as rul of common sense or of sound logic and their desuetu has also been occasioned by several of the obscuriti difficulties and conflicts occurring in the ancient tex having been removed by the commentaries, the Diges

(11) Kisore Lal Sarkar, Mimamsa Rules, T.L.L. p. 78.

and judicial decisions.[12] In *Sri Balasu's case*,[13] their Lordships of the Privy Council point out the necessity of exercising great caution in interpreting books of 'mixed religion, morality and law' lest lawyers unacquainted with old text books and commentaries on Hindu Law should take for 'strict law', 'precepts' meant for appeal to the moral sense. In the same case their Lordships referring to the application of Jaimini's rule in the Purva Mimamsa (that a text supported by the assignment of a reason ought to be deemed not as a *Vidhi* or injunction but as Arthavada or merely recommendatory) to Vasista's text prohibiting the giving or receiving of an only son in adoption as he should remain 'to raise up progeny for the obsequies of his ancestors', comment as follows: 'That if sound it would be conclusive as to Vasista's text. But it is rather startling and a very intimate acquaintance would be needed before admitting its truth..... It may however be fairly argued that one, who having the power to give an absolute command, gives an injunction not expressed in unambiguous terms of absolute command but resting on a reason, is addressing himself rather to the moral sense of the hearers than to their duty of implicit obedience'. As illustrations of the application of ancient Hindu rules of interpretation to modern cases may be cited, the rule against the attributing of multiplicity of sense to the same word applied by Seshagiri Ayyar, J., in *Meenakshi* v. *Muniandi Pani-*

(12) Mayne, Hindu Law and Usage, 10th Edn. by Sri S. Srinivasa Iyengar.

(13) *Sri Balasu Gurulingaswami* v. *Sri Balasu Ramalakshmamma*, (1899) 26 I. A. 113=22 M. 398 P.C.

khan,[14] the law of the loaf and the staff relied upon *Tukaram* v. *Narayana Ramchandra*[15] and the rule strict construction in regard to statutes taki away rights and privileges adopted recently by a F Bench of the Bombay High Court.[16]

4. The English system of jurisprudence, exhib marked traces of the influence of Roman Law and se ral of the maxims of the Common Law are borrow from the Civil Law and are still quoted in the langua of the Civil Law. Plucknett expresses the opinion th even a casual examination of the Canon Law affor ample evidence of the prevalence in the 14th Century a system of interpretation 'which was hardly inferi considering its date to that which formed the subject the late Sir P. B. Maxwell's treatise,'[17] So long as t English Monarchs were supreme, they were the la makers as well as interpreters of law and problems interpretation did not arise. When the King w forced to delegate his function of administering just to a different person the matter of interpretation beca more urgent. In the first stage the legislator and t judge were the same and laws were interpreted acco ing to the intentions of the legislator which were nec sarily well-known. In the second stage the legislat and interpreter were drifting apart but could co municate with each other by informal conferences. the third and last stage when the original legislat

(14) 38 Mad. 1144 at 1151 (I.L.R.).

(15) 36 Bom. 339 at 356 (F.B.).

(16) *Per* Lokur, J., in *Martand Jiwaji Patil* v. *Narayan Krisi Gumast Patil*, 1939 Bom. 305 (F. B.).

(17) Plucknett, Statutes and their interpretation in the 1st half the 14th Century, 1922 (Cambridge Studies in English Legal Histo page 164.

passed away the necessity arose of preserving the intention of the legislator in judicial precedents. The Courts thus finally assumed the role of interpretation which originally belonged to the legislators and was relinquished by them in course of time.[18] The growth of commerce, the advance of national and social intercourse and the progress of civilization in general led to the increase of litigation and the growth of Courts of law and equity resulted in the introduction of new maxims of interpretation adapted to the increased wants of justice. English Law which lies embedded in innumerable cases or 'a Codeless myriad of precedent' as Ilbert chose to call it, developed in the course of centuries several of its rules of interpretation which have now been analysed and classified in the standard works on the Law of Interpretation.

5. The administrative exigencies of British Rule in India rendered the codification of laws necessary early in its history. It was found expedient to frame rules for the easy understanding of young and inexperienced judges and magistrates and adaptation of the same to the needs of the country without the extraneous assistance of English Law libraries and the rules of law contained therein. Thus in 1793, Regulations were passed applicable to Bengal and they were later extended to Bombay and Madras but their variety instead of establishing uniformity in law made the confusion already existing worse confounded which led to a strong appeal on the part of Lord Macaulay for the codification of laws at the time of the passing of the

(18) *Plucknett*, Statutes and their interpretation in the 1st half of the 14th Century, 1922 (Cambridge Studies in English Legal History), p. 165.

Charter Act of 1833. Macaulay pointed out the pr lence of Hindu Law, Muhammadan Law, Parsee Law English Law, perpetually playing upon each other disturbing each other in their operation and influ and the anomaly of 'process and pleadings' being the fashion of one nation' and the 'judgment' 'acc ing to the laws of another', 'an issue evolved accor to the rules of Westminster and decided accordin those of Benares'.[19] The First Indian Law Commis was accordingly appointed in 1834 and was followed others as a result of which Acts, Regulations, O nances and Rules were passed both by the Indian Central Legislature and the Provincial or Local Le latures, and the Governor-General or the Governo Council or by themselves (according to the terms under the authority of the various Acts passed by British Parliament for the governance of India) w constitute the contents of the Indian Statute B to-day.

6. The charter of the Supreme Court, 1 Cl. (18) ordained that the Supreme Court should one of equity administering justice according the rules and proceedings of the High Court Chancery in Great Britain. The High Court Calcutta inherited the same right from the Supr Court and other High Courts acquired the same r under the Letters Patent issued to them, first in 1 and later in 1865 (Cl. 19). Originally by means regulations and later by the Civil Courts Acts Bengal, Madras and Bombay it was provided that Civil Courts subordinate to the High Courts should

(19) Codification in British India, (Tagore Law Lectures, 19 Bijoy Kisor Acharya, B.A. LL.B., p. 91.

according to 'justice equity and good conscience' in cases where no specific rule existed.

7. The law relating to the interpretation of Indian Statutes has been codified to a small extent in the General Clauses Act[20] passed by the Imperial Legislature (Act X of 1897) with 30 sections and the provinces have also passed their own General Clauses Acts[21] but these touch only the fringe of the subject as pointed out by Sri Acharya in his Tagore Law Lectures on Codification in British India and a satisfactory codification has yet to be made to bring about uniformity and clarity of the Law of Interpretation in India. It must be stated that the present General Clauses Acts are both redundant and defective and are by no means exhaustive even in the limited range they purport to operate. The Interpretation of Indian Statutes is thus largely governed by rules of justice, equity and good conscience which are themselves 'identical with the corresponding relevant rules of the Common Law of England'[22] subject to alterations and modifications to suit the conditions, circumstances and notions obtaining in this country. The following pages attempt to analyse and expound these principles enunciated and adopted by the Judges of this country and those entrusted with the administration of its laws now for over a century.

(20) See Appendix B.

(21) *See* Appendix C onwards.

(22) *Jagat Mohan* v. *Kalipado Ghose*, 1922 Pat. 104 at 106, see also *Waghela* v. *Shekh Mashudin*, (1887) 14 I.A. 89, 96.



LIST OF ABBREVIATIONS USED.

A.

Add. (ams) Eec. ..	Addams, Ecclesiastical.
A and E.	Adolphus and Ellis's Reports.
A. and E. (N. S.) ..	Do. do. (New Series).
And. ..	Anderson's Reports.
App. Cases. ..	Law Reports (New Series) Appeal Cases.
Ast. Ent. ..	Aston's Entries.

B.

Bing. ..	Bingham's Reports.
Bing. (N.C.) or B.N.C.	Bingham's New cases.
Bla. Com. ..	Blackstone's Commentaries.
B. and A. or B. and Ald. or Barn. and Ald. ..	Barnewall and Alderson's Reports.
B. and Ad. or B. and Adol. or Barn. and Adol. ..	Barnewall and Adolphus's Reports.
Burr. ..	Burrow's Reports.
B. and B. ..	Broderip and Bingham' Reports.
B. and P. ..	Bosanquet and Puller's Reports.
Bac. Abr. ..	Bacon's Abridgment.
Bl. H.	Blackstone's (Henry) Reports.
Bl. W. ..	Blackstone's (William) Reports.
Bli. ..	Blight's Reports.
Bli. (N.S.). ..	Blights Reports (New Series).
B. N. C. ..	Brook's New Cases or Bingham's New Cases.
B. and S. ..	Best and Smith's New Reports.
Brac.	Bracton de Legibus.
Bridg. ..	Bridgman's Reports.
B. and C. or Barn and Cress. ..	Barnewall and Cresswell's Reports (1822-30).

C.

Co. M. C. ..	Coke's Magnacharta (2 Ins.)
Co. P. C. ..	Coke's Plea of the Crown (3 Inst.).
C. B. ..	Common Bench (Common Pleas) Reports.
Co. Lit. ..	Coke on Littleton.
Ch. Ca. ..	Cases in Chancery.
Ch. D.	Law Reports (New Series) Chancery Division (1875-90).
Ch. R. ..	Reports in Chancery.
Ch. Sp. Ca. ..	Cases special in Chancery.
Cook C. and R. ..	Cook's Cases and Rules.
Cox Eq. Cas. ..	S. C. Cox's Equity Cases.
Co. Rep. ..	Coke's Reports.
Cl. and Fin. ..	Clerk and Finnelly's Reports.

C. Cod. or Cod. Jur. Civ.		Codex (Juris Civilis). Justinian Codex.
C.L.R.	..	Common Law Reports.
Coo. and Al.	..	Cooke and Alcock's Reports.
		D.
D.	..	Law Reports (New series) Exchequ Division (1875-1880).
De. G. M. G.	..	De Gex, Macnaghten and Gordo Reports.
Dig.	..	Justinia Digestae, Sive Pandectae.
D. and Ry.	..	Dowling and Ryland's Reports.
		E.
E. and B.		Ellis and Blackburn's Reports.
East.		Easts's Reports.
El. B. and S.	..	Ellis Best and Smith's Reports.
El. and E.	..	Elli's and Ellis's Reports.
Ex. Ch.	..	Exchequer Reports, Welsby.
Ex. D.	..	Law Reports, Exchequer Division.
		H.
H.		Hare's Reports.
H. P. C.	..	Hale's Pleas of the Crown.
H. L. Rep. or Cas.	..	Clark's House of Lords. Reports.
H. and C.	..	Hurlstone and Coltman's Reports.
H. and N.	..	Hurlstone and Norman's Reports.
Hudson and B.	..	Hudson and Brooke's Reports King Bench and Exchequer (Ireland) Vols. (1827-1831).
		J.
Jur.	..	Jurist Reports.
Just. Inst.		Justinian's Institutes.
J. P.	..	Justice of the Peace Weekly Notes c Cases.
		K.
K. and J.	..	Kay and Johnson's Reports.
		L.
L. J.	..	Law Journal.
L. J. (N. S.).	..	Law Journal (New Series).
L. J. (Os.).	..	Law Journal Reports (1822 to 31).
L. R.	..	Law Reports.
L. T.		Law Times.
		M.
M. I. A.	..	Moore's Indian Appeals.
Moo. P. C. C.	..	Moore's Privy Council Cases.
Macq.		Macqueen's Appeal Cases (Scot.).
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SUPPLEMENT.

Page 83 *add* as para. 2 (*a*) after the end of para. 2.

EFFECT OF RETROSPECTIVE LEGISLATION ON PENDING ACTIONS.

In a case where a new Act (Gaming Act, 1845) was passed when an action was pending, it was held that the Act was not retrospective so as to defeat the pending action though S. 18 of the new Act clearly indicated that "no suit shall be brought or maintained for recovering money, etc." Baron Parke remarked, it would be strange to hold that the Legislature could have meant that a party who had a perfect title to recover a sum of money under a contract made prior to the Act just as he had a right to any personal property should be deprived of such a right without compensation, *Moon* v. *Durden,* (1848) 2 Ex. 22 : 12 Jur. 138 : 76 R.R. 479. Similarly it was held that S. 4 of Trade Disputes Act, 1906, which prohibited the entertaining by any Court of an action for tort against a Trade Union did not prevent the disposal of an action commenced before the passing of the Act. *Smithies* v. *National Union of Operative Plasterers,* (1909) 1 K. B. 310 : 78 L.J.K.B. 259 : 100 L.T. 172 and to the same effect was the decision in *Beadling* v. *Goll,* (1922) 39 T.L.R.128, in a case arising under a later Gaming Act (of 1922). It was further held in *Henshall* v. *Porter,* (1923) 2 K.B. 193 : 92 L.J.K.B. 866, that the Gaming Act of 1922 did not prevent the institution of an action under a repealed section of an older

Act, even after the Repealing Act came into force, in respect of a cause of action which arose before the date of the Repealing Act. Section 32 of the Medical Act, 1858, was held not applicable to an action for medical services begun before the date of the said Act but tried after its enactment though S. 32 prohibited the recovery after 1—1—1859 of any charges for medical treatment unless upon proof of the medical officer being on the medical register. The case reported in *Colonial Sugar Refining Co.* v. *Irving,* (1905) A.C. 369, is to the same effect. The principles laid down in the above cases have been adopted in the Indian High Courts. (*Vide* 50 All. 965, *Ram Singha* v. *Shanker Dayal.*) In the only case in which such retrospective legislation was applied even to pending actions it was done on account of the express language used in the Acts governing the same. Compare S. 7 of the Bihar Money Lenders Act (VII of 1939) referred to in 1939 F.C. 74 (A.I.R.), *Shyamkantlal* v. *Rambhajan Singh* and S. 14 of the New Bihar Act referred to in 1936 P. C. 49 : 15 Patna 268 : 63 Indian Appeals 47 (P. C.). In 1941 F.C. 16 at 37 (A.I.R.), Sulaiman, J., referring to the above decisions and relying upon them held that no express language was used in the United Provinces Regularization of Remissions Act, to show that it was applicable to actions pending in appeal. His Lordship summarised the law in regard to the matter in the following terms, "It is a well-recognized rule that statutes should as far as possible be so interpreted as not to affect vested rights adversely, particularly where they are being litigated. When the Statute deprives a person of his right to sue or affects the power or jurisdiction of a Court in enforcing the law as it stands, its retrospective character must be clearly expressed.

Ambiguities in it should not be removed by Courts nor gaps filled up in order to widen its applicability. It is a well-established principle that such Statutes must be construed strictly and not given a liberal interpretation."

Page 342 *add* at the end of Rule of Interpretation No. (iii).

In a later case, however, (1941) F.C. 47 at 65 (A. I.R.) *Subramanian Chettiar* v. *Muthuswami Goundan*, Justice Varadachariar explained the observations of the learned Chief Justice in the Central Provinces Sales Tax Act case with reference to this rule as only meaning that the Canadian and Australian decisions should be used with care and it was not meant by those observations to ban their use altogether. The learned Chief Justice himself in the above case expressed his view in the clearest terms in favour of following the principles enunciated by the Judicial Committee of the the Privy Council in cases interpreting Ss. 91 and 92 of the British North America Act. His Lordship observed that the Government of India Act, 1935, contained analogous provisions to those of the British North America Act (Ss. 91 and 92) and it could scarcely be doubted that the Parliament had these provisions in mind when it enacted the later Act and the long series of decisions interpreting the two sections of the British North America Act may be accepted as a guide for the interpretation of the provisions of the Government of India Act. His Lordship particularly referred to the "pith and substance" rule enunciated in the decisions of the Judicial Committee and held the same was applicable to the Indian Constitution Act agreeing with the Madras view expressed in 1939 Mad. 361 (A.I.R.)

and dissenting from the view expressed in *Sagarmull Marwari* v. *Bhuthuram,* 1941 Pat. 99 (A.I.R.). Justice Varadachariar further observed in the above case 1941 F.C. 47 (A.I.R.) that a long line of decisions commencing with the *Citizens Insurance Co.* v. *Parsons,* (1882) 7 Ap. Cas. 96, has interpreted the provisions of the Canadian Constitution in a manner that almost assimilates their scheme to that adopted in S. 100 of the Government of India Act. The rules of interpretation adopted in the Canadian cases were evolved only as a matter of reasonableness and commonsense and out of the necessity for satisfactory solution of conflicts arising from the inevitable overlapping of subjects in any system of distribution of legislative powers. They were not to be confined to any particular system of Federal Constitution. For example "the pith and substance" rule was applied to a case arising under the Government of Ireland Act which did not embody a Federal system, *vide* 1937 A.C. 863 *Gallaghar* v. *Lynn,* followed in 1938 A.C. 708 *Shannon* v. *Lower Mainland Dairy Products Board.* Even Justice Sulaiman in his dissenting judgment in the above case agreed with his colleagues in holding that the principles of interpretation laid down by their Lordships in the Canadian cases could not be brushed aside on the ground that they related to a different constitution. Those principles were not only of the greatest weight but must be a guide even in interpreting the Indian Constitution. The language of the sections of the Indian Constitution Act however could not be interpreted in the light of the interpretation of the corresponding sections in the Canadian Constitution; but the principles of interpretation themselves that have been established in a long series of cases could not

be ignored. His Lordship however raised a caution that it was dangerous to import only a part of any doctrine and exclude another part, as such a partial application may frustrate the very object for which the rule was evolved. For example the doctrine of incidental encroachment could not be imported in favour of the Provinces without the doctrine of the unoccupied field in favour of the Centre also being imported. The two doctrines have to go hand in hand.

Page 358 *add* at the end of para. 9.

The burden of proving that the Indian Legislatures are subject to a strange and unusual prohibition against retrospective legislation lies upon those who assert it. There is nothing in S. 292 of the Constitution Act which leads to such a presumption as to the intention of the Parliament which passed the Constitution Act. *Vide* observations of Gwyer, C.J., in 1941 F.C. 16 at p. 24—*United Provinces* v. *Mt. Atiqua Begum*.

Page 365, para. 12, line 11 *add* the following:—

There is nothing in S. 292 which could by any stretch of language be construed as a prohibition of retrospective legislation. The purpose of S. 292 was clearly to negative the possibility of any existing law being held to be no longer in force by reason of the repeal of the law which authorized its enactment (Government of India Act, 1919) and it is merely a safeguard usually inserted by draftsmen in drafting Constitutional Statutes, replacing earlier ones: *Cf.* S. 135 of the Union of the South Africa Act, S. 129 of the British North America Act, 1867 and S. 108 of the Commonwealth of Australia Constitution Act. *Per*

Gwyer, C.J., in 1941 F.C. 16 (A.I.R.); *U.P.* v. *Mt. Atiqua Begum*. Justice Sulaiman observed in the above Federal Court case that though the main object of enacting S. 292 was to preserve the enforceability of the then existing laws, its language was certainly more emphatic than would have been ordinarily necessary, especially in contrast with S. 130 of the Government of India Act, 1919, which was couched in a simpler language. The difference in language employed in the two sections is clearly marked. The language of S. 130 of the Government of India Act, 1919, is in a negative form while the language of S. 292 of the Constitution Act is in a positive form. The former is a mere saving clause, pure and simple, its effect being to make it clear that the mere repeal of the previous Government of India Act shall not *ipso facto* put an end to the other laws previously in force. The latter is affirmative and continues the other laws in force until such laws are hereafter altered, repealed or amended. In S. 130 of the earlier Act, the word "repeal" relates to the Constitutional Acts specified in the Schedule attached. In the latter section (S. 292) "repeal, etc.", referred to the other laws which were not repealed by the Government of India Act, 1935, but may thereafter be repealed. The High Court in deciding the full bench decision reported in 1940 All. 272 (F.B.), appears to have been impressed by the obvious departure from the phraseology of the older S. 130; but if the view taken in the High Court were to prevail, no legislation altering, repealing or amending the law which was in force, when the Government of India Act was passed, no matter how long afterwards it comes to be passed, can have any retrospective provision so as to affect any transactions prior in time to the date when such Act was actu-

ally passed. The result would be that not only the Provincial Legislatures but also the Central Legislature would be debarred from giving any retrospective effect whatsoever to any Act by which not only a previous Act but any other law is altered, repealed or amended. Such a consequence was too drastic to have been contemplated by Parliament. There is no adequate reason why the power to give retrospective effect to a new legislation must be curtailed, limited or minimised in this fashion. Such an interpretation ought not to be placed on the language of a statute when it is possible to place a more reasonable, more consistent interpretation than the one suggested. There is thus nothing in S. 292 of the Government of India Act, 1935, which debars the Central or a Provincial Legislature which has altered, repealed or amended a previously existing law from giving the new provision a retrospective effect from dates earlier than when the Act was passed. (*Per* Sulaiman, J., in the above case).

Justice Varadachariar agreed with his colleagues in holding that the language employed in S. 292 of the Constitution Act was very similar to that found in S. 135 of the Union of South Africa Act and led to the inference that the former might have been taken from the latter. His Lordship did not see that there was anything in the policy underlying S. 292 different from the policy underlying similar provisions in the other Constitution Acts referred to above. There was no distinction between the statement that the previous law should continue in force subject to repeal or amendment by later legislation and the statement that it shall continue in force till repealed or amended by later legislation. It was mere speculation to suggest

that Parliament had some reason or motive for denying the power of retrospective legislation to the Indian Legislatures and not a fair interference from the language used in S. 292. (*Per* Varadachariar, J., in 1941 F.C. 16 at p. 44.)

At page 411 *add* in continuation of the line 16.

The validity or otherwise of the Regularization of Remissions Act of 1938 (XIV of 1938) passed by the Legislature of the United Provinces came to be considered in a recent decision of the Federal Court reported in *United Provinces* v. *Mt. Atiqua Begum and others* reported in 1941 F.C. 16 (A.I.R.) reversing the judgment in 1940 All. 272 (A.I.R.) which held unanimously that the said Act was *ultra vires* of the Provincial Legislature of the United Provinces. The United Provinces having been faced with a catastrophic fall in agricultural prices (followed by the threats of tenants to withhold payment of rent on a large scale), devised a scheme for the systematic reduction of rents followed by adjustment in land revenue and remissions of rent were ordered by the Local Government on an extensive scale, by a series of orders passed in the years 1931 and 1932. In the year 1937, a Full Bench of the Allahabad High Court held in another case that the remissions of rent made by the Government were not in accordance with S. 73 of the Agra Tenancy Act, 1926 and were *ultra vires*. The suit out of which the Federal Court appeal ultimately arose was instituted in 1934 by two co-sharer landlords against Thekadars (lessees of proprietary rights in land) for their share of arrears of rent ignoring the remissions ordered by the Government and the defendants in answer thereto set up the remissions granted by the

Government as a defence to the action against them. The first two Courts gave effect to the remissions whereon the plaintiffs preferred a second appeal to the High Court and challenged therein the validity of the remissions on the ground that they were not warranted by S. 73 of the Agra Tenancy Act. The action of the Provincial Government which was due largely to the grave emergency arising at the time and which could not be said to be supported by the existing law as stated above was sought to be regularized by the passing of the said Regularization of Remissions Act XIV of 1938, which was passed before the appeal in the above matter came before the High Court. When one of the parties in that case sought to take advantage of the new legislation on the ground that the other party could no longer challenge the validity of the remission orders the other party challenged the new Act itself as being invalid and beyond the competence of the Legislature of the United Provinces. The matter was referred to a Full Bench which held the said Act passed in 1938 to be beyond the competence of the United Provinces Legislature. All the three Judges who composed the Full Bench in that case reported in 1940 All. 272 (F.B.) (A.I.R.) were of the opinion that the said Act was contrary to the provisions of S. 292, Constitution Act, as it attempted to legislate retrospectively and one of the judges composing the Full Bench, Justice Iqbal Ahamad was also of opinion that none of its provisions were in respect to any of the matters set out in List II of Schedule VII to the Constitution Act or even with respect to any of the matters in List III, the Concurrent list. When the case was before the Full Bench, the High Court had caused a notice to be given to the Advocate-General of the Province to support the validity of the Act if he

was so minded, and after the Full Bench had given the judgment against the validity of the Act, the case came again before the High Court for final disposal when the Government of the United Provinces applied to be made a party to the appeal in order that it might have a right of appeal to the Federal Court. The application not having been opposed, the Government was made a party and its name appeared thereafter as respondent under the style of the United Provinces Government, in addition to those of the plaintiffs, appellants and the defendants. The United Provinces describing itself as, "The United Provinces, applicant (sic) to the Federal Court" came in appeal before the Federal Court after the same was admitted by the High Court.

All the three Judges of the Federal Court agreed that the appeal filed by the United Provinces should be dismissed though for different reasons and though all of them had come to the conclusion that the said United Provinces Regularization of Remissions Act of 1938 was *intra vires* of the Provincial Legislature both as to the subject-matter as well as in regard to the retrospective effect given to the provisions of the Act as they were all of opinion that the subject-matter of the Act came under item No. 21 of List II of Schedule VII attached to the Constitution Act. The Chief Justice was inclined to uphold the preliminary objection raised in the case, that the Advocate-General ought not to be heard because the High Court had no power to make the Province a party to the suit and the Province had therefore no right to appeal, but as he was not inclined to formally dissent from the different opinion held by both his brethren, he expressed the view that the appeal ought to be dismissed on the ground that the Province

was not interested in any way in the original dispute between the parties to the litigation, save to uphold the validity of the Act in question and that it was therefore impossible for the Federal Court at the instance of a third party who had no direct interest in the original suit to order the High Court to vary the decree which it had given as between plaintiffs and defendants to the suit. Justice Sulaiman was of the opinion that the decree could not be disturbed because the Act did not apply to pending actions as it was neither a declaratory nor an explanatory Act and had not been expressly and unambiguously made applicable to pending cases. Justice Varadachariar was of the same view as the learned Chief Justice and in view of the fact that the contesting defendant had not merely acquiesced in the decree of the High Court, but had not even appeared before the Federal Court to explain the reason for his absence, held that notwithstanding the correctness of the appellants' contention as to the validity of the Impugned Act, there was no justification for disturbing the decree passed by the High Court in the case.

As regards the right to appeal on the part of the Provincial Government, Gwyer, Chief Justice, expressed the opinion that in a case between private parties where the validity or constitutionality of some Provincial legislation was an issue and not any matter relating to the proprietary rights or interests of the Province and where in such a case it is decided to add a party to represent the interests of the Province, that party should more correctly be the Advocate-General and not the Province itself, and that in a case between private parties involving a question of the scope of the executive authority of the Province, the Advocate-

General of the Province was an appropriate party to be added under O. 1, R. 10 of Civil Procedure Code, and that in other such cases involving the Constitutional validity of a Statute, the Advocate-General can rarely be a necessary party and not perhaps even a proper party in each and every case. It might be convenient to secure the presence of the Advocate-General, in such cases, but the only method of doing it was by the passing of legislation consistent with the provisions of the Constitution Act enabling his appearance in such cases. Justice Sulaiman was of opinion that the appellate Court had inherent power to add a party in special circumstances and that in the exercise of that power it could properly add the Provincial Government as a party in a second appeal in a case where the validity of a Provincial Act was in issue and where the Act had come into force during the pendency of the appeal giving no occasion for the addition of Government as a party earlier. Justice Varadachariar was of the opinion that in relation to litigation between private parties, the Government did not always and for all purposes stand in the same position as a private third party and that apart from cases where its pecuniary or proprietary interests or the interests of the public revenues are involved, the Government had also an interest in others as the guardian of public interest, as in a case where the validity of the Provincial Act was being questioned, the Government was interested in defending the Statute as the guardian of the public for whose benefit, the Statute was enacted and where the challenge to the Statute if successful would affect the executive authority of the Province it had an additional interest also. The question should be decided on grounds of justice and convenience and not on the

words of any particular provision of the Civil Procedure Code. It was immaterial whether the Government was impleaded in the name of the Province or of the Advocate-General, the theory being that in either case the Crown was a party. The Civil Procedure Code does not contemplate an intervention by the Advocate-General as distinguished from addition of the Advocate-General or the Government as a party and once either of them has been impleaded as a party, it or he had a right of appeal under S. 205 (2) of the Constitution Act which applies without qualification to all parties. Under all circumstances where the Advocate-General was added as a party without objection by the plaintiffs, there was no defective jurisdiction so as to make the addition void and the Advocate-General had certainly a right of appeal as a party in fact. Justice Sulaiman further expressed himself on the above matter by stating that even if the Court's discretion was wrongly exercised in adding Government as a party it did not in any way affect the Government's right of appeal under S. 205 (2) of the Constitution Act as the section applied to all parties and not merely to those parties only who were directly aggrieved by the judgment, decree or final order appealed against.

In regard to the *intra vires* character of the Impugned Act again the learned Judges of the Federal Court expressed themselves in the following terms:

They were all unanimous in regard to the following points:—

(*a*) There is nothing in S. 292 of the Government of India Act (which keeps existing British Indian laws before the commencement of Part III of the Constitution Act in force until they are altered or repealed or

amended by the competent authority) to debar the Central or Provincial Legislature from legislating with retrospective effect on laws in force at the commencement of Part III of the Constitution Act, so as to give the new provision a retrospective effect from a date earlier than that on which the Act was passed, the simple ground being that the powers of the Indian Legislature were as large and ample as those of Parliament itself within the sphere allotted to them.

(*b*) The Impugned Act comes clearly within the ambit of Item No. 21 of List II which relates to land including the relation of landlord and tenant, the collection of rents, etc.

The learned Chief Justice was of opinion that S. 292 of the Constitution Act was worded in almost an identical language with that contained in the Constitution Act of the Union of South Africa and though the language used in the section of the Constitution Acts of Canada and Australia was a little different there was substantially no difference in the meaning of the language employed there and there was nothing in the language of that section which could by any stretch of language be construed as a prohibition of retrospective legislation. The absence of previous sanction enjoined by S. 299, sub-cl. (3) of the Constitution Act is cured by the subsequent assent under S. 109 (2) and the Act did not really alter or repeal or amend the Agra Tenancy Act of 1926. The Impugned Act being an Act for remission of rent and validation of doubtful executive orders in respect thereof is covered by the item "Collection of rent" in entry No. 21 in List II in as much as the power to legislate in respect of collection of rent includes the power to

legislate for its remission and in as much as the power to legislate on a subject covers the power to validate the executive orders issued in respect thereof. His Lordship expressed an opinion which was *obiter* that the Impugned Act was not an Act with respect to jurisdiction and powers of Provincial Courts, as powers of a Court are not effected merely because certain executive orders are not allowed to be questioned in it. He also expressed his opinion, with which Justice Sulaiman agreed, that the Impugned Act does not conflict with Ss. 4 and 9 of the Civil Procedure Code, in view of the exceptions contained in those very sections. Both the learned Chief Justice and Justice Varadachariar left open the question whether the Impugned Act validated the remissions of rent for all purposes so as to take away the land-lords' contractual rights and the tenants' contractual liability and prevent a suit for the recovery of the rent alleged to have been remitted.

Justice Sulaiman expressed the opinion that the pith and substance of the Impugned Act was not only with respect to "Remission of Rent" which comes under that heading in Item 21, or only with respect to "Relation of land-lord and tenant" in which aspect it comes under the said heading in the same item, but it is also with respect to conferring on the Government extensive powers of interference with the legal rights of land-holders in their lands, but that the last matter was also included in entry No. 21 under the head "Rights in and over land" and thus the Act fell entirely within the Provincial List. He laid down the rule that an Act could not be said to be with respect to certain matter if it related to it incidentally or had a remote or indirect connection with it, and it could be said to relate

to that matter only if the pith and substance of the Act regarded as a whole was that matter. Justice Varadachariar was of the opinion that the Impugned Act may be said to have altered or amended S.73 of the Agra Tenancy Act, 1926 and according to His Lordship whether the Impugned Act laid down general provisions for remission for all time or remissions made or to be made in particular years and whether the orders validated are the orders of the Executive Government authorising remission in general terms or orders of Revenue Officers passed under such authority, the subject-matter of the Act is Remission of Rent and as such it came clearly under Item No. 21 of List II.

Page 419 line 24 *add* after the word " Ground ".

The correctness of this decision was canvassed before the Federal Court in 1941 F.C. 47 (A.I.R.), *Subrahmanyan Chettiar* v. *Muthuswami Goundan* in which a majority of the Court upheld the decision of the Madras High Court in 1940 Mad. 890 (A.I.R.) which followed the Full Bench decision, Justice Sulaiman dissenting from the views of his learned brethren. Both the learned Chief Justice and Justice Varadachariar dealt with the several points argued before them without deciding all of them and confined their decision only to the actual point that arose for decision in the case before them. His Lordship the Chief Justice held that Madras Act IV of 1938, whatever it was, could not be said to be legislation with respect to Negotiable Instruments or Promissory Notes. It was quite immaterial that many or most, even of the debts with which it deals are in practice evidenced by or based on such instruments, but the practice adopted by money lenders could not affect the validity or other-

wise of a Statute. The liability in the case before their Lordships was one under a decree of Court passed before Act IV of 1938. The debt ceased to be one evidenced by or based on a pronote as it had merged in the decree and it had become a judgment-debt. The necessity to have recourse to the terms of the pronote upon which the decree was passed in order to scale down the debt under the Act did not affect the nature of the liability. His Lordship refused to express an opinion as to whether the same could be said to apply to decrees passed after the Act was passed. It was enough to state that the provisions of Act IV of 1938 that had to be applied to the decree obtained by the appellant in the case were in the competence of the Madras Legislature and the same did not admit of any doubt as the legislation might be justified under the Items 4 and 15 of List III and Item 2 in List II. His Lordship likewise refused to express any opinion on two other points pressed before him. The first was what His Lordship characterised as 'a difficult question' as to whether on the footing that the 'pith and substance' of the Impugned Act was with respect to matters covered by List II and not any of the matters covered by List I, matters in the Impugned Act covered by List I may still be held to be valid on the ground that they were merely incidental to its main purpose and if so to what extent. The second was whether the incidental character of such provisions will save them if they come into conflict with Federal or Central Legislation already occupying the field, and the closely related question as to what was the true construction of S. 107 (1) of the Constitution Act with reference to the above matters. His Lordship was not prepared to accept in its entirety the view of the Madras High

Court that the Impugned Act does not really affect the principles embodied in the Negotiable Instruments Act, which view according to him was too broadly stated. A Provincial Act could not, according to His Lordship, in the form of a Debt Relief Act fundamentally affect the principle of negotiability or the rights of a *bona fide* transferee for value though the position would be different where the pronote had never changed hands and is sued upon by the original payee. Justice Varadachariar again confined his judgment to the simple point "that there was no reason for holding the Impugned Act is invalid or inoperative so far as the subject-matter of the proceedings was concerned". Dealing with the subsidiary points, His Lordship disagreed with the view of the Madras High Court that Act IV of 1938 might be regarded as one relating to "Agriculture" as "agricultural indebtedness" could not be comprehended under that term however much relief of agricultural indebtedness may contribute to the prosperity and efficiency of agriculture. It could not be said that Act IV of 1938 was wholly invalid, and even on the footing that it was partly invalid it was not a case where the valid and the invalid provisions are inseparably intermixed or the innocent provisions are merely ancillary to the offending provisions. There being no provision in Act IV of 1938 dealing in terms with Negotiable Instruments, any objection based on the wide scope of the Act may be obviated by interpreting the general terms used in the Act so as to limit them to cases with which alone the Legislature was competent to deal.

Justice Sulaiman disagreed with his learned brethren and in a dissenting judgment expressed his view

of Act IV of 1938 was *ultra vires* of the Madras Legislature. He was of the opinion that the effect of Ss. 8 and 19 of Act IV of 1938 was to compel Courts to re-open decrees passed on the basis of promissory notes before the Act came into force and to recalculate the amounts due on them disallowing all interest outstanding on 1—10—1937 and even the principal if double the amount had already been paid. The Negotiable Instruments Act, read with the Usurious Loans Act, enjoins interest should be calculated at the contract rate and no Court should cut down such interest if a decree has already been passed; and it was very difficult to sever and split up the contract of the loan and the decree passed by the Court on that basis. The two were inextricably mixed up together and indissolubly connected and accordingly the Provincial Act being repugnant to the existing Indian Law relating to Promissory notes which is exclusively a Federal subject is void to that extent. The reasoning of His Lordship may be stated by way of a few propositions enunciated in the course of his judgment.

(1) The words, ' with respect to ' under S. 100 require that the legislation referred to should be looked at as a whole and must substantially fall in the one list or the other. Remote connection would not be enough.

(2) The doctrine of " pith and substance " is not a special doctrine exclusively applicable to the Canadian Constitution. Cf. *Gallaghar* v. *Lynn*(1937)Ap. Cas. 863 and *Shannon* v. *Lower Mainland Diary Products Board,* (1938) Ap. Cas. 708 : 1939 P.C.36(A.I. R.).

(3) Incidental encroachment is not forbidden and hence one has to see whether the Provincial Act is with respect to matters in List II and falls within it. If it

does not, the Act falls to the ground. If it falls, however, within List II, one has to see whether it falls within matters mentioned in List III. If it does, but no assent of the Governor-General is obtained then again it falls to the ground if it conflicts with an existing Indian Law. If such assent is obtained, it will remain valid for the time being. Then it has to be seen whether it falls within any of the subjects in List I and whether it is really "with respect to any of the matters" in List I. If that is so again, the Act will fall to the ground. If the matter is not such, the Act trenches on List I, indirectly or incidentally. The Province will have *prima facie* authority to legislate if all the provisions contained therein fall within List II or List III, unless it can be shown it is with respect to any matter in List I or is void on account of repugnancy. (Page 54).

(4) The measure is one relating to money lending and agriculturists in the land and may be said to come also within the item " contracts " in Entry No. 10 of List III.

Considering the Act as a whole, it cannot be doubted that it is in regard to the matters in Lists II and III. Resort to residual power can be had only when all the categories in the three Lists are absolutely exhausted and the same cannot be done with reference to Act IV of 1938. The fact that prior to the Constitution Act, there was legislation for relief from high rates of interests also suggests that Parliament could not have been unmindful of this, so as to omit it in all the existing lists.

(5) The Impugned Act deals with debts which necessarily include debts due on Negotiable Instruments

included in Entry 28 of Item I, which is assigned to the Federal Legislature as Negotiable Instruments are of all-India importance. Holders in due course have to be protected and allowed to assume that the consideration due under such instruments is full and they cannot be expected to enquire whether the original maker was an agriculturist or no. Act IV of 1938 deals with debts in general and hence cannot be said to be an Act which as a whole is one ' with respect to ' negotiable instruments, but it is impossible to deny that the Act encroaches upon the field covered by such instruments. They could well have been excluded from the operation of the Act, but it was not so done. There is thus a trespass into the Federal Legislative field. There is an apparent overlapping and there is no clear demarcation.

(6) In cases of conflict between two apparently competing entries, there should be a judicial endeavour to avoid it as far as possible and a general power should not be so construed as to make a nullity of a special power conferred by the Act operating in the same field but the general power should be read in a more restricted sense to enable giving effect to the special power in its ordinary and natural meaning. This may be called the 'principle of exception.' This was laid down by the Chief Justice Gwyer and Justice Jayakar in the C.P. Sales Tax Act case, importing the same largely from Canadian cases, but the maxim generalibus specialia derogant cannot be applied to the three competing lists in Schedule VII for the following reasons:

(*a*) In some cases both the subjects may be general and only parts thereof overlapping. Thus 'a promote ' belongs to a general category but one executed

by an agriculturist belongs to a special category. Again 'debt' is a general category but debt due on a pronote is special. Either the two categories "debt due on a pronote" or "debt due from an agriculturist" can be regarded as particular and the other more general from the point of view from which we look at the matter.

(*b*) The application of the "rule of exception" would cut out a portion of the power given to the Centre and allocate it exclusively to the Provinces, so that even though the general provision includes such a power, the Centre will be prevented from legislating with reference to it at all.

(*c*) The Canadian and Indian Constitutions are not identical and the categories are not in *pari materia*. Though the object of S. 100 of the Indian Constitution Act is the same as that of Ss. 91 and 92 of the Canadian Constitution Act the language is not identical.

6. In its fullest scope S. 100 would mean that if it happens that there is any subject in List II which also falls in List I or List III, it must be taken as cut out from List II. On this strict construction there would be no overlapping at all. But the rigour of this interpretation is relaxed by the use of the words "with respect to" in that section which mean "pith and substance" and it does not prohibit a mere incidental encroachment provided the field is clear. Act IV of 1938 purports to alter, repeal or amend matters falling in List I particularly under Ss. 32 and 79 of the Negotiable Instruments Act and S. 3 of the Usurious Loans Act, but it is not competent to do so. (*Vide* observations of the learned judge at page 58 of the report). The Act affects decrees passed previously on promissory notes which could not have been touched at all

under the existing Indian law in Madras. The Act therefore is an instance of a case where Central Legislation actually exists and already occupies the field. The argument that in this particular case the debt due on promissory note had merged in a decree long before the Impugned Act cannot be taken into consideration as the judgment of the High Court is not passed on any such narrow ground, but purports to declare that S. 8, sub-S. (1) and sub-S. (2) of the Act as a whole are *intra vires*. These sub-sections, however, are substantive provisions altering the terms of the contract and the decree passed before or after the Act. Taking all the provisions together particularly S. 8, it is difficult to sever and split up the contract of the loan and the decree passed by the Court on the basis of that contract, and hence the Act comes directly within the judgment of the Privy Council in 1919 A.C. 935 at 944 : A. I.R. 1919 P.C. 145 *In re,* the Initiative and Referendum Act and (1937) A.C. 377 : 1937 P.C. 93 (A.I.R.) *Attorney-General for British Columbia* v. *Attorney-General for Canada,* which definitely lay down that where the offending provisions are interwoven into a scheme, and are not severable, the whole scheme is *ultra vires*. If the Provincial Legislature has no right to amend the contract evidenced by the promissory note so as to deprive the promisee of his right to recover interest due under it, it could hardly exercise the same power in an indirect way by providing that a Court should not pass a decree for such interest or that if once a decree is passed, the decree should be amended so as to deprive the promisee of that interest. The legislature cannot do that indirectly which it is prohibited doing directly. *Cf.* 1899 A.C. 626 *Madden* v. *Nelson and Fort Sheppard Railway* and 1940 A.C. 513

at page 534 : *Board of Trustees of Northern Irrigation District* v. *Independent Orders of Foresters*.

(7) The Madras Act IV of 1938 also interferes with the powers of Courts and the Provincial Legislature has no authority to interfere with the jurisdiction and powers of Courts except with respect to matters coming within the List in regard to the subjects in which it is competent to legislate. *Cf.* Entry No. 53 of List I, No. 2 of List II and No. 15 of List III. Where a legislature is not competent to deal with a particular subject-matter it is equally incompetent to affect the jurisdiction and powers of the Courts with respect to that matter.

(8) In Canada the solution where a repugnancy exists is mostly a judge-made law but in the Indian Act the principle is embodied in S. 107 which in the event of repugnancy in certain cases makes the law of the Central Legislature prevail over that of the Province, even though there would be competency in the latter if there had been no such Central Legislation.

(9) The doctrine evolved with regard to the Canadian cases is that if the encroachment is merely incidental there is no defect so long as the trespass is upon a non-occupied field. There is thus engrafted upon the doctrine of incidental encroachment the further doctrine of the unoccupied field. *Cf.* (1894) A.C. 189 at pages 200 to 201 : *Attorney-General of Ontorio* v. *Attorney-General for the Dominion of Canada*; 1907 A.C. 65 at 68 *Grand Trunk Railway of Canada* v. *Attorney-General of Canada;* 1930 A.C. 111 *Attorney General for Cannada* v. *Attorney-General for British Columbia*; 1940 A.C. 513 *The Board of Trustees of Northern Irrigation District* v. *Independent Orders of*

Foresters, all referred to at pages 62 and 63 in 1941 F. C. 47 (A.I.R.). The principles laid down in the above cases have only permitted an incidental encroachment but in none of the cases has a trespass as well as a clash been tolerated. Accordingly it is not permissible to import the doctrine of incidental encroachment in favour of the Provinces and refuse to import the doctrine of the unoccupied field which is in favour of the Centre.

Page 576 *add* at the end of line 17, as a fresh para.

The subjects dealt with in the three Legislative lists are not always set out with scientific definitions, as it would be practically impossible to define each item in the Provincial list in a way to make it exclusive of every other item in that list. Parliament therefore was content to take a number of comprehensive categories and to describe each of them by a word of broad and general import. General words like "Local Government," "Education," "Water," "Agriculture," and "Land" were used and they were amplified and explained by a number of examples or illustrations, some of which would anyhow be held to fall under the head of the more general word used while other subjects were included which would not so obviously come within the category of the more general word used, as for example, "Court of Wards", "Treasure Trove", which would not ordinarily have been regarded as included under the General head "Land" if they had not been specifically mentioned in Item 21 :(*Per* Gwyer, C.J., in 1941 F.C. 16 (A.I.R.) at page 25 *U.P.* v. *Atiqua Begum*). Gwyer, C.J., in the above case deprecated attempts to enumerate in advance all the matters to be included

under any of the more general descriptions and expressed his opinion that it would be sufficient and much wiser to determine each case as and when it came before the Federal Court. His Lordship pointed out that the attempt of Justice Iqbal Mahommad to indicate by a list of illustrations which was not necessarily exhaustive as to what exactly were the items comprehended by the general head "Collection of rents" in Entry No. 21 in List II of Schedule VII, was a dangerous guide for the construction of a Statute.

Page 576 *add* as Notes under Item 2.

The validity of S. 2 of the United Provinces Regularization of Remissions Act of 1938 which prohibited the calling in question (in any Civil or Revenue Court) Orders of the Provincial Government or any authority empowered by it, passed before or after the commencement of the said Act, remitting rent on account of any fall in price of agricultural produce, notwithstanding anything in the Agra Tenancy Act, 1926, etc., was called in question in 1941 F.C. 16—*U.P.* v. *Atiqua Begum* and the point that arose for consideration, was whether the Act was one with respect to matters covered by this item, that is to say, the jurisdiction and the powers of the Provincial Courts. Gwyer, C.J., felt it unnecessary to decide the matter, but if he had to do so, he was of opinion that jurisdiction and powers of the Courts were not affected merely because certain executive orders are not allowed to be questioned in any Court. The pith and substance of an Act like the United Provinces Regularization of Remissions Act was rent or remission of rent and not amendment of the law of evidence and therefore it fell within List II, and not List III. Justice Sulaiman, however, was

of the opinion that entries No. 2 and 21 read together would cover any restriction that may be imposed on the jurisdiction and powers of Courts with respect to land, land tenures, relation of landlord and tenants and collection of rent, and the Impugned Act would certainly fall within this item. It seemed to His Lordship that the Impugned Act was in pith and substance not only one with respect to relation of landlord and tenant or the collection of rents, but also with respect to conferring on the Provincial Government very extensive powers of interference with the legal rights of landholders in their lands, but the category of land in Entry No. 2 of List II includes "Rights in and over land" and is also within the exclusive authority of the Provincial Legislature and even if the said Act related to the assessment of revenue it fell within Entry 39 and was still in List II. Justice Varadachariar expressed his opinion that S. 2 of the Act had a twofold operation; on the one hand it prevented the landlord from questioning the order of remission with a view to recovering the full rent, on the other, it might also be held to prevent the Court *suo moto* from questioning the order of remission and that in the latter sense it might be said to be an interference with the power of the Court and Item 2 of this list could be relied upon in answer to such a contention.

Page 578 *add* as part of the Notes to Entry 21.

The general descriptive words in this item (Item 21) include the collection of rent. A provincial legislature which can legislate with respect to the collection of rents has also got the power to legislate with respect to any limitation on the power of a landlord to collect rents, that is to say, with respect to remission of rents

as well as to their collection. The legislation with respect to the remission of rents is certainly a legislation with respect to a matter included in this item. *Per* Gwyer, C.J., in 1941 F.C. 16 at page 25. Gwyer, C. J., in the above case, while expressing his opinion that the United Provinces Regularization of Remissions Act (XIV of 1938) was one that clearly fell under Item No. 21 of List II, held that though that Act might deal with something else, *i.e.*, the validation of doubtful executive orders, still it primarily fell under Item 21, as it was not unusual or extraordinary for the validation of doubtful executive acts by the legislatures and the Parliament which passed the Constitution Act, could not have overlooked it, so as to lead one to think that it was not intended to be included in any of the three lists. It is true that "Validation of Executive orders" or any entry even remotely analogous to it is not to be found in any of the three lists, but the legislation for that purpose must necessarily be regarded as subsidiary or ancillary to the power of legislating on the particular subjects in respect of which the executive orders may have been issued. Justice Sulaiman referring to this item in the same case 1941 F.C. 16(A. I.R.) at page 32 held that it should be given a liberal interpretation so as to invest Provincial Legislatures with full power to legislate with respect to the matters contained in that item as there was no category in List I or List III similar to Entry No. 21, so long as such legislation does not conflict with any other provision. S. 21 need not necessarily be confined to substantial provisions or held not to be applicable to procedural law. Methods of collection of rent may be a matter of procedure, but they fall under this item. Similarly provisions as to registration of leases, functions of spe-

cial officers in fixing rents and giving of certain notices though procedural, fall within this entry.

Justice Varadachariar was of the opinion that there was no difference whether the Impugned Act (United Provinces Regularization of Remissions Act of 1938) laid down general provisions for remission of rent for all time or dealt with the remission made or to be made in particular years, as in any case the subject-matter must be held to be remission of rent and the Act would clearly fall, therefore, within this item. It was again immaterial according to His Lordship whether it was the order of the Provincial Government or the consequent order of the Revenue Officer that was dealt with by the Impugned Act as in either case it was one which related to remission of rent and it fell within this item. The avowed purpose of the Impugned Act was to ensure that the tenants had the benefit of remissions which had been made. The fact that the provisions of the Impugned Act were couched in the form of an immunity of the remission order from attack in any Civil or Revenue Court would not take away from its character as one depriving the landlord of his right to the full rent, as it was well settled that the substance of the legislation has to be examined to see what the legislature was doing and the form which the statute may have assumed under the hand of the draftsman, was not decisive.

ADDENDA.

Read in continuation of the matter ending at page 631 and as a part of Footnote No. 4 at page 407.

The Federal Court of India had again to consider for the last time the validity of the Bihar Money-Lenders' Act (VII of 1939) in a judgment decided on 6th

December, 1940, reported in *Lachmeshwar Prasad Shukul and others* v. *Keshwar Lal Chaudhuri and others*, (1941) F.C. 5 (A.I.R.), wherein the following points were decided.

RIGHT OF COURTS TO TAKE NOTICE OF LEGISLATION PASSED AFTER A DECREE.

1. Gwyer, Chief Justice, relying upon a recent decision of the Supreme Court of the United States of America, reported in *Patterson* v. *State of Alabama*, (1934) 294 U.S. 600 at 607 held that Courts were entitled in the exercise of appellate jurisdiction not only to correct errors in judgments under review but to make such disposal of the case as justice required and as part of it they were bound to consider changes either in fact or in law supervening after the judgment was delivered. Justice Varadachariar, agreeing with him, held that once a decree of a High Court had been appealed against, the matter became subjudice again and the Court had thereafter seisin of the whole case (though for certain purposes such as execution, the decree was to be regarded as final) and the power to do justice between the parties could not be restricted to cases in which it was able to hold that the lower Court had gone wrong in its law. The powers of the Federal Court when acting as a Court of Appeal were not less extensive than those of the High Courts when hearing an appeal and the contention that Appellate Courts' powers were limited was negatived in *Attorney-General* v. *Birmingham, Tame and Rea District Drainage Board*, (1912) A.C. 788 and in *Quilter* v. *Mapleson*, (1882) 9 Q.B.D. 672. The powers of an appellate

Court were co-extensive with those of an original Court and the same was a principle of legislation in British India from 1861 onwards as embodied in the several Acts passed regulating Civil Procedure in the country. The very words of O. 58, R. 5 of the Rules of the Supreme Court on which reliance was placed in the two English Cases referred to above, namely, that the Court of Appeal has power to make such further or other order as the case may require have been reproduced in O.41, R. 33 of the Civil Procedure Code of 1908. The position was the same even before the enactment of the Civil Procedure Code of 1908 as can be seen from *Krishnamachariar* v. *Mangammal,* 26 Mad. 91 (I.L. R.) in which it was laid down that the hearing of an appeal under the processual law of this country was in the nature of a re-hearing. It was on that theory that Courts in India had in numerous cases recognized that in moulding the relief to be granted in a case on appeal, the appellate Court was entitled to take into account facts and events which have come into existence after the decree appealed against—*vide* 36 Madras 439 : 21 M.L.J. 31, *Kanakiah* v. *Janardhana Padi.* In *K.C.Mukherjee* v. *Mt. Ram Ratan Kuer,* 63 I.A. 47 : 1936 P.C. 49 (A.I.R.), Lord Thankerton observed in the course of the argument that the duty of a Court was to administer the law of the land at the date when the Court was administering it. Justice Sulaiman was of opinion that while he was not bound to apply the new Act (Act VII of 1939) to the case before him, he was equally clear there was nothing which debarred him from applying the same and relying upon the practice of the Federal Court as could be gathered from the several decisions passed by it in regard to the said Act (Bihar Money Lenders Act), his Lordship felt

that the passing of the new Act (Act VII of 1939) h rendered it unnecessary to consider the validity of t earlier Act of 1938.

EFFECT OF SECTION 7 OF ACT VII OF 1939 ON THE JURISDICTION OF THE FEDERAL COURT.

2. No final opinion was expressed on this aspect as was unnecessary for the purposes of the case, but Ju tice Varadachariar, expressed his opinion that S. 7 d not affect the jurisdiction or powers of the Fede Court which the Provincial Legislature is preclud from dealing with under the Constitution Act. H Lordship was of opinion that simply because a pro sion in a Statute Book took the form of a direction the Court and is couched in a language which sa "No Court shall pass a decree", instead of mere enacting, "no money-lender shall be entitled, etc., recover more than a particular sum by way of intere etc.," it could not be said that such a provision was valid under the Constitution Act as one affecting t jurisdiction of the Federal Court.

3. Justice Sulaiman expressed his opinion th proceedings must be deemed to be pending in the Hi Court so long as there is a mere application for lea to appeal to the Federal Court though the certifica required by S. 205, Government of India Act has be granted, but that as soon as the required amounts h been deposited to the satisfaction of the High Cou and the High Court had declared that the appeal w "admitted", the matter became open to the Fede Court and that the declaration that an appeal was a mitted was not a ministerial or administrative act, b

must be regarded as a final judicial act of the High Court, and that after such admission the appeal passed out of the absolute control of the High Court. He further held that although under O. 37, R. 1 of Federal Court Rules, the Federal Court had an undoubted power to excuse compliance with rules of the Federal Court and could give such directions in matters of practice and procedure as it considered just and expedient, it is extremely doubtful whether such "directions" can be in supersession of O. 45 of Civil Procedure Code in the absence of any rules amending it, so as to dispense with the necessity of the High Court directing the appeal to be admitted. He was further of opinion that if an appellant wished to take some grounds other than the constitutional one, he must state the grounds of appeal and pray for the certificate either that as regards the amount or value and nature, the case fulfilled the requirements of S. 110, Civil Procedure Code or that it was otherwise a fit one for appeal to His Majesty in Council. In such a case, the certificate granted by the High Court under S. 205 (1) of the Constitution Act was not sufficient but the appellant must in addition obtain a further certificate required by O. 45, R. 3 of the Civil Procedure Code.

It was improper to allow an appellant to evade the provisions of O. 45, Civil Procedure Code, by simply obtaining a certificate under S. 205 (1) of the Constitution Act and then asking for leave to raise all the other grounds by bringing them within the third category of sub-S. (2) of S. 205. The "other" grounds referred to in sub-cl. (3) of Cl. (2) of S. 205, meant grounds other than those mentioned in the first

and second categories. Justice Varadachariar, ho ever, felt it unnecessary to express any opinion on t point of Processual Law as to whether an additio certificate was necessary under R. 45 (3) to enable party to raise before the Federal Court any questi besides the one covered by the certificate under S. 2 (1) of the Constitution Act. The learned Juc equally did not feel called upon to express any opini as regards the effect of the absence of an order by t High Court declaring the appeal in the particular c before him admitted, though he seemed to think that did not appear that such an order under R. 8 of O. was a condition precedent to the exercise of jurisd tion by the Federal Court. The learned Judge also fel was certainly doubtful if the Federal Court would ha power to dispense with the giving of security in a c where security had to be given under the rules. regard to the rules as to payment of printing, depo transmission charges, etc., which stand on a differ footing, the Federal Court had power to dispense w or give special directions as to printing and product of records before that Court and it was illogical to sist that the High Court must pass an order un para. (*a*) of R. 8 of O. 45 in the circumstances of case. The particular provisions relating to the ab in O. 45 were procedural provisions and it was necessary to hold that non-compliance with them in High Court ousted the jurisdiction of the Federal Co where a certificate under S. 205 (1), Constitution A had once been given.

CHAPTER I.

The Golden Rule of Interpretation.

1. **The Golden Rule.**—The first and most elementary rule of construction, in fact the rule which has been variously termed the cardinal or the golden rule of interpretation is that in cases where the language is plain, precise, clear, unequivocal and unambiguous words should be understood in their technical sense[1] if they have acquired one, else in their ordinary and grammatical sense. Where the language admits of only one meaning as Vattel points out, no question of interpretation at all arises.[2] *Absoluta sententia expositore non indiget.*[3] There is no necessity to explain that which requires no explanation.

2. **Grammatical and ordinary sense.**—Where the language is clear and unequivocal the grammatical and ordinary sense of the words is to be adhered to irrespective of the results that may flow from such a construction.[4] The great rule of interpretation was laid down by Lord Wensleydale in *Grety* v. *Pearson*,[5] and followed in a series of English cases and quoted with approval by their Lordships of the Privy Council and several eminent judges of Indian High Courts. The

(1) *Ganpat* v. *Premsing*, 15 I.C. 122.

(2) Vattel: Law of Nations, Bk. II, S. 263. Maxwell's Interpretation of Statutes, P. 3. Also 22 I.C. 503.

(3) 2 Inst. 533.

(4) *Mercantile Bank of India, Ltd.* v. *Official Assignee of Madras*, 1933 M. 207=143 I. C. 641.

(5) 6 H. L. Case 106=26 L. J. Ch. 405.

words of a statute should be taken as they stand a interpreted without reference to the previous state the law, except when it is impossible to arrive at a co clusion without reference to such law.[6] As Lord He schell pointed out in the leading case of *Bank England* v. *Vagliano*,[7] if a statute intended to embo in a Code a particular branch of the law is to be treat in any other fashion its utility would be entirely lo and its very object frustrated.

3- **Literal construction.**—The literal construction h always been one that has found favour with Courts interpreting Acts and Statutes from the earliest time Tindal, C.J., had laid down as early as 1832 that whe the language is clear and explicit effect should be giv to it whatever may be the consequences (as the words the statute best speak the intention of the Legislatu which must be intended to have meant what it h actually expressed) without any speculation based on apprehension whether the intention of the Legislatu would be fulfilled by such an interpretation.[8] T same view was followed up by Coleridge, J., in *Poco* v. *Piebring*,[9] wherein he says that once the mind of t Legislature is ascertained through the words it h employed, "nothing is more dangerous than to flin from that conclusion because we think the enactment less wise or efficacious than it might have been made

(6) *Abdur Rahim and others* v. *Syed Abu Mahomed Barkat Shaw and others*, 1928 P.C. 16=9 P.L.T. 65=32 C.W.N. 482=27 M. W. 339=55 I.A. 96=26 A.L.J. 464=54 M.L.J. 609=108 I.C. 361= B.L.R. 774=55 C. 519=48 C.L.J. 55=1928 M.W.N. 926 (P.C.).

(7) (1891) A.C. 107.

(8) *Warburton* v. *Loveland*, (1832) 2 Dow & Cl. 480=6 Bligh. (S.) 1=6 E. R. 806, quoted in 1921 C. 397 (F.B.).

(9) (1852) 18 Q.B.D. 789=118 E.R. 298=16 Jur. 760=21 L. Q.B. 365, quoted with approval in 1921 C. 397 (F.B.).

wholly fails of its object; perhaps the most efficacious mode of procuring good laws, certainly the only one allowable to a court of justice is to act fully up to the spirit and language of bad ones and to let their inconvenience be fully felt by giving them their full effect." Lord Brougham put the matter even more forcibly in *Gamford* v. *Spooner*,[10] "The construction of an Act must be taken from the bare words of the Act. We cannot fish out what possibly may have been the intention of the Legislature. We cannot aid the Legislature's defective phrasing of the statute. We cannot add and mend and by construction make up deficiencies which are left there. If the Legislature did intend that which it has not expressed clearly, much more if the Legislature intended something very different, if the Legislature intended pretty nearly the opposite of what it said it is not for judges to invent something which they do not meet with in the words of the text ..... it is not for them to so supply a meaning for in reality it would be supplying it. The true way in these cases is to take the words as the Legislature has given them and to take the meaning which the words given naturally imply unless where the construction of those words is either by the preamble or by the context of the words in question controlled or altered. And therefore if any other meaning was intended than that which the words purport plainly to import, then let another Act supply the meaning and supply the defect in the previous Act". A Court cannot assume the functions of the Legislature by departing from the ordinary meaning of the precise words used, merely because it sees,

(10) (1846) 4 M.I.A. 179=6 Moo. 1=18 E.R. 667, quoted with approval in 1921 C. 397 (F.B.).

or fancies it sees an absurdity or manifest injusti from an adherence to the literal meaning.[11] It bound to administer the law as enunciated by the legi lature and not to enlarge or restrict the sphere of i application.[12] It is the province of a judge to expou the written law from the statutes of the realm and tl unwritten or common law from judicial decisions a text books of authority on principles deduced fro sound reason and just inference and not to determi what is for public good, for that pertains properly to tl province of a statesman. If uncertainty and confusi is to be avoided, the clear and unambiguous wor should be interpreted in their plain and natural mea ing and courts should not allow themselves 'to be l into speculations as to their reasonableness or unre sonableness by reference to the ever captivating b often misleading ideals of public policy.'[13]

4. P. C. on the golden rule.—The Privy Coun has laid down that in the case of a positive enactme of the Indian Legislature the proper course is examine the language of the statute and ascertain i proper meaning uninfluenced by considerations deriv from the previous state of the law or of the English la on which it is founded.[14] What matters is what is sa

(11) Jervis, C.J., in *Abley* v. *Dale*, (1851) 11 C.B. 378=20 L.J.C 233=188 E.R. 519=15 Jur. 1012.

(12) 1921 Cal. 397 (F.B.).

(13) *Per* Baron Parke in *Egerton* v. *Brownlow*, (1853) 4 H.L.C. =18 Jur. 71=28 L.J.Ch. 348=94 R.R. 1=10 E.R. 359=8 S.T.T. (N.S.) 196, quoted in 1921 C. 397 (F.B.).

(14) *Mt. Ramanandi Kuar* v. *Mt. Kalawati Kuar*, 1928 P.C. 2= C.L.J. 171=32 C.W.N. 402=27 L.W. 782=54 M.L.J. 281=1928 M. N. 282=30 Bom.L.R. 227=5 O.W.N. 96=9 P.L.T.97=7 P. 221=107 C 14=55 I.A. 18; See also *A. B. Neogi* v. *B. B. Neogi and others*, 1 R. 105. Also *Secretary of State* v. *G. T. Sarni and Co.*, 1930 Lah. 3 *Sardar Diwan Sing Maftoon* v. *Emperor*, 1935 N. 90.

and not what may be supposed to have been intended.[15] To expound and not to improve is the domain of the interpreter.[16] A forced construction cannot and ought not to be placed on the provisions of a statute which are capable of bearing only one construction on considerations based on commercial exigencies or business convenience for the latter call for the interference of the Legislature but not of judicial interpretation.[17]

5. **Duty of Judges.**—The office of judges is *jus dicere* and not *jus dare,* to interpret the law and not to make or give the law. To abide by the words of a statute is their sole duty and not to attempt to reform it according to the supposed intention of the Legislature nor to attempt to make it reasonable and for that purpose to exclude cases that fall within the express terms of a rule of law.[18] They have to deal with what the Legislature has placed before them and not to convert themselves to legislative bodies for supplying deficiencies in a statute.[19] In other words they have to apply the law made for them instead of attempting to make the law themselves.[20] When the words are clear they

(15) *Brophy* v. *Attorney-General of Manitoba,* (1805) A.C. 202 referred to in 1930 P.C. 120=58 M.L.J. 300=31 M.L.W. 601=126 I.C. 88. Also *Bhagatanand* v. *Sardar Muhammad,* 1935 Lah. 150.

(16) *Committee of Management for Gurudwara Nankana Saheb* v. *Hiradas Chela of Gobin Das,* 1936 Lah. 298.

(17) *Per* Lord Dunedin in *Imperial Bank of India* v. *U. Rai Gyaw Thu Co., Ltd. and others,* 1923 P.C. 211=1923 M.W.N. 609=51 C. 86= 1 R. 637=50 I.A. 283=2 Bur.L.J. 254=21 A.L.J. 784= 25 Bom. L.R. 1279=39 C.L.J. 186=28 C.W.N. 470=45 M.L.J. 505=33 M.L.T. 395=76 I.C. 910 (P.C.).

(18) *Daily Gazette Press, Ltd.* v. *Karachi Municipality,* 1930 Sind 287; 1928 P.C. 2.

(19) *Raja of Mandasa* v. *Jagannayakulu,* 1932 M. 612 at 619 =1932 M.W.N. 350=36 M.L.W. 292=63 M.L.J. 450=55 M. 883= 140 I.C. 331 (F.B.).

(20) *Salu Bai* v. *Bajat Khan,* 42 I.C. 200=1917 Nag. 215 (F.B.).

cannot be qualified or neutralized by intention gather from outside.[21] It would be arguing in a vicious circ to begin with making a fallacious assumption of a thi which is not in the enactment and then attempting bend the language in favour of the assumption made. The obvious effect of words must be carried out wh the language affords no scope for making distinctions; for when once room is made for drawing distinctio it becomes difficult to ascertain where the line is to drawn.[24] It is erroneous for judges to speculate as the intention of the Legislature.[25] As Justice Jackso of the Madras High Court has pointed out in *Govind swami Naicker* v. *Perumal Raja and another*[1] the que tion in all these cases is not what the Legislature i tended but what it has enacted and if the statute defective it should be amended and till it is done it plain meaning cannot be set at naught on assumption however well founded they may happen to be. As th learned Judge points out, 'The governing factor i not what the Legislature intended but what the Legis lature enacted. The whole object of embodying th law of a country in an elaborate system of codes is tha every subject should have a ready means of knowin

(21) *Avaru* v. *Asi Bai and others*, 1932 M. 8. See also *Dail Gazette Press, Ltd.* v. *Karachi Municipality*, 1930 Sind 287.

(22) *Kuar Nageshar Sahai* v. *Kuar Mata Prasad and another*, 192 Oudh 236 and *Leader* v. *Duffey*, (1888) 13 A.C. 294.

(23) *T. S. Venkataramana Iyer and another* v. *Kuppuswami Iyen gar and another*, 1930 M. 954=1930 M.W.N. 676=32 M.L.W.439=5 M.L.J. 907=129 I.C. 240.

(24) *Ibid.*

(25) *Bhagatanand* v. *Sardar Muhammad*, 1935 Lah. 150. Als *Doulatram* v. *Halokanya*, 13 I.C. 244; *Deshraj* v. *Emperor*, 193 Lah. 781.

(1) 1927 M. 327=25 M.L.W. 106=38 M.L.T. 30=1927 M.W.N 53=99 I.C. 893.

the law under which he is governed. ..... It will be intolerable if a person following the plain language of a Code has taken certain action and involved himself in certain litigation only to find that the law of the country is not in the code, is not even in the authorised reports but is buried away in a private journal in a distant province to which only those in the neighbourhood of an extensive law library can have access.' Courts are accordingly bound to expound the laws as they stand giving to all words used the meaning they have according to common usage or if defined in the statute itself according to that meaning.[2] As has already been pointed out, the scope of the definite and unambiguous words of a statute can neither be enlarged nor narrowed. Neither words of limitation nor of qualification ought to be introduced for there should be no necessity for doing either.[3] It is not permissible to strain the meaning of words because it would appear that the natural interpretation would extend the alleged scope of an Act as expressed in the preamble or the discussions preceding the passing of that Act.[4]

6. Language primarily to be looked to.—Where the language admits of no doubt or secondary meaning it ought to be obeyed and given effect to without reference to the opinion of the interpreter as to the wisdom or justice of the law promulgated.[5] The language can-

(2) *Mercantile Bank of India* v. *Official Assignee of Madras*, 1933 M. 207=143 I.C. 641.

(3) *Per* Cunliffe, J., in *Mrinalini Devi* v. *Harlal Roy*, 1936 C. 339.

(4) *P. S. Kesavulu Naicker* v. *Corporation of Madras*, 1926 M. 381 =50 M.L.J. 301=23 M.L.W. 233=92 I.C. 1053. Also *Manoo Ali* v. *Hawabi*, 1936 R. 63.

(5) *Gopal Chandra Biswas* v. *Guru Charan Kritania and others*, 1929 Cal. 141.

not be strained beyond its ordinary meaning or qualified by the addition of something which is not there in order to avoid what is considered inequitable or to grant something which is just and conscientious for it amounts to a transformation by the judge of what is the law into what he thinks ought to be the law.[6] Nor should considerations of reasonableness and convenience alone influence the interpreter in pursuing his straight course.[7] It is not the bounden duty of a court to put a construction on words which is the best in its view, one that would be just and work out least inconvenience but only to put a construction that is best in the sense that it is nearest the language of the Legislature.[8] It is not the concern of courts to consider or be influenced by the desirability, utility or reasonableness of a particular enactment but to give effect to a statute without reference to expediency or consequences. Courts are bound to do justice according to law laid down and if the latter deviates from the straight and narrow path of natural justice it is the duty of the Legislature and not the judiciary to correct it.[9] It is immaterial even if the plain construction should lead to an absurdity or an anomaly; provided there is nothing in the Act itself to modify or qualify the same it should be strictly followed.[10] If the language of a legislative enactment is unambiguous and does not admit of any other

(6) *Salu Bai* v. *Bajat Khan*, 42 I.C. 200=1917 Nag. 215 (F.B.). Also 1928 All. 62.

(7) 1931 All. 162 (F.B.).

(8) *J. C. Mukherjea* v. *Karnani Industrial Bank, Ltd.*, 1930 Cal. 770.

(9) *Emperor* v. *Hari and others*, 1935 S. 145.

(10) *Wilkinson* v. *Wilkinson*, 1923 B. 321 (F.B.), *per* Crump, J. Also *Hadyatulla* v. *Ghulam Md. Beg and another*, 73 I.C. 444.

meaning courts should obey and administer it notwithstanding it may be in conflict with the Law of Nations or the International law; the responsibility in such cases would rest on the Legislature itself and the Courts ought not to question the authority of Parliament or assign any limits to its power.[11]

The Legislature must in such cases be presumed to have framed a special rule of legislation conscious of its violating a provision of International law.[12]

7. **Additions not permissible.**—Not only is it not the province of Courts to expand or narrow down the plain significance of statutory language; it has likewise no power to introduce something into a statute that is not there. Pemsel lays down that if the words of a statute are precise and unambiguous they themselves best declare the intention of the Legislature and there is no need for reading into the context words not found there.[13] A case not dealt with in a statute cannot be dealt with merely because there seems to be no reason why it should have been omitted even in a case where the omission appears to be unintentional.[14] It is the duty of a judge neither to add nor take away in the absence

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(11) *Hatimbhai Hussan Ally* v. *Framroz Eduljee Dinshah*, 1927 Bom. 278=29 Bom.L.R. 498=51 B. 516=104 I.C. 8 (F.B.).

(12) *Tukojirao Holkar* v. *Sowkabai Pandharinath Rajapurkar*, 1929 B. 100=31 Bom.L.R. 7=53 B. 251=117 I.C. 424.

(13) (1891) A.C. 534 quoted in *Kayastha Co., Ltd.* v. *Sitharama Dubey*, 1929 All. 625 (F.B.). See also *Municipal Committee, Multan* v. *Bhai Kishan Chand*, 1927 Lah. 276.

(14) *Deputy Commissioner, Jhung* v. *Budhu Ram and others*, 1937 L. 38 (F.B.). Also *Crawford* v. *Spooner*, 6 Moo. P. C. 9; *Municipal Committee, Multan* v. *Bhai Kishan Chand*, 1927 Lah. 276; *Abhayanand* v. *Rameshwar*, 1930 Pat. 395; *Vickers son and Maxim* v. *Evens*, (1910) 79 L.J.K.B. 954.

of good ground for it.[15] It is contrary to established canons of interpretation to make generous additions to the language of a statute.[16] Considerations based on hardship are likewise foreign to the interpretation of the plain language of the law.[17] As has often been stated the so-called hard cases have a tendency to make bad law and to result in incorrect decisions being given. Even in a case where the effect would be to divest a vested right effect has to be given to the clear language of the statute.[18] Neither the exalted rank nor the exemplary virtues of an individual entitle her to a departure from the ordinary construction of a statute.[18-a]

8. Absurdity no ground for interference.—The doctrine of interpretation according to the plain meaning has been carried to its logical conclusion in *Md. Hayat Haji Mahomed Sardar* v. *Commissioner of Income-tax, Punjab and N. W. F. Province*[19] where it was held that the plain meaning should be followed even though the same may lead to manifest absurdity. The reason is stated to be that when once the meaning is plain, it is not the province of a Court to scan its wisdom or policy but to expound it according to the real

(15) *Everest* v. *Wells*, (1841) 2 M. & G. 269.

(16) 1921 P.C. 184 at 186. See also *Kumar Kamala Ranjan Roy* v. *Secretary of State*, 1938 P.C. 281.

(17) *Abdul Hassain Khan* v. *Mt. Mahmudi Begum and others*, 1935 Lah. 364; *also* 1928 All. 241 and 1932 All. 494 (F.B.); *P.R.P.L.Chetty Firm* v. *G. Lon Pow*, 1923 R. 103; *Kidar Nath and others* v. *Bagh Sing*, 1937 L. 504; 1937 Mad. 667 at 670.

(18) *Mirja Saheb* v. *Champa Lal*, 23 I.C. 888.

(18-a) *R.* v. *Treasury*, (1851) 20 L.J.Q.B. 312. In this case Queen Natalie of Servia was denied the privileges of a Sovereign on the ground that she was only a Queen Consort.

(19) 1931 Lah. 87 (F.B.). *See also* observations in *Corporation of the City of Victoria* v. *Bishop of Vancour Island*, 1921 P.C. 240.

sense of the words.[20] Neither approval nor disapproval of positive enactments lies within the province of judicial interpretation[21] and it is in no wise concerned with the fulfilment of the object and policy.

9. Appication of the Golden Rule.—Absolute as the rule would appear to be, it has been so much restricted and qualified and subjected to so many limitations and safeguards that the real effect of the rule has to be measured by its actual application to decided cases. For it is the actual application to the concrete facts of a case more than its theoretical enunciation that brings out a correct indication of its intrinsic worth and utility in the field of judicial interpretation.

10. Illustrations from Privy Council.—In a case decided as early as 1896 the Privy Council condemned the practice in Indian Courts of the subordinate judiciary in disregarding the plain provisions of an Indian statute like the Indian Succession Act by reference to current English Law and the law that prevailed before the Act was passed intimating that that method had gone out of fashion in England and was certainly not desirable in India.[22] In *The Imperial Bank of India* v. *U. Rai Gyaw Thu and Co., Ltd. and others*,[23] their Lordships in considering the effect of the words, 'except in the case provided for by S. 79' occurring in S. 80 of the Transfer of Property Act (which excludes the priority of a mortgagee making a subsequent advance to

(20) *Queen* v. *The Judge of the City of London Court*, (1892) 1 Q.B. 273.

(21) *Noksing* v. *Bholusing*, 1930 N. 73.

(22) *Narendranath Sircar* v. *Kamal Basini Das*, 23 Cal. 563, at 572 (P.C.).

(23) 1923 P. C. 211, *ante*.

the mortgagor with or without notice of an intermediate mortgage in regard to the security for such subsequent advance) held them to refer to cases where a maximum was expressed under S. 79 of the Act and the word 'subsequent' also occuring in S. 80 was construed to mean with reference to the context as 'subsequent to the intermediate mortgage' notwithstanding the contention that was pressed on their Lordships that when a mortgage was to secure further advances any advance made was not in reality a subsequent advance and that the Legislature wished to preserve the system of mortgaging by deposit of title deeds and that they were really useful for the exigencies of business which required immediate advance without delay and that the language should be so interpreted as not to defeat an avowed object of the Legislature. In rejecting the considerations advanced before their Lordships they held that such considerations could not be an incentive to the putting of a forced construction on words which were capable of only one meaning. Again Lord Sinha in *Mt. Ramanandi Kuar* v. *Mt. Kalawati Kuar*[24] when referred to the difference in English Law between the grant of probate in common form and probate in solemn form held that the provisions of the Probate and Administration Act of 1885 were plain enough and it was worse than unprofitable to consider how far that distinction was incorporated into Indian Law. It was pointed out that the ecclesiastical origin of testamentary jurisdiction was discarded in India and the Indian Legislature evolved its own independent system which differed in several respects from the English Law and

(24) 1928 P.C. 2.

formed a self-contained system. The words 'qualified persons' occurring in S. 24 of British North America Act, 1867 were held to include women as in its primary and original meaning the word 'person' included members of both sexes.It was pointed out that the plain meaning could not be restricted to males on the ground of custom or reasoning that commended itself to people who had to apply the law at a remote period under different circumstances in countries in different stages of development and that an appeal to Roman Law, or English decisions of an earlier period or even to the common law of the country or the practice of Parliament could not supply a rule of interpretation for construing the British North America Act.[25] The Lord Chancellor who delivered the judgment put it somewhat naively by stating that to those who ask why 'persons' should include females, the obvious answer is why should it not. Lord Atkinson in *Corporation of the City of Victoria* v. *Bishop of Vancover Island*,[1] interpreted the word 'building' occurring in S. 197, sub-S. (1) of the British Columbia Municipal Act of 1914 as meaning a thing composed of the fabric of the building as also the ground on which it stood and which enclosed it as that was the only sensible and rational interpretation and not merely the 'fabric' without the ground. It was pointed out that to interpret otherwise would create an inconsistency and antagonism between the narrow meaning and the more comprehensive meaning it bore in the other parts

(25) *Henrietta Muir Edwards and others* v. *Attorney-General of Canada and others*, 1930 P.C. 120=58 M.L.J. 300=31 M.L.W. 601=126 I. C. 88.

(1) 1921 P. C. 240.

of the statute. Lord Carson delivering the judgment of the Privy Council in *Gout and another* v. *Cimitian*[2] refused to apply the law relating to 'domicile' in construing the words 'ordinarily resident' occurring in Cyprus Annexation Order-in-Council of 1914 and held that the plaintiff who was present in Cyprus on the required date and had been there for several months previously and took no steps to retain his Ottoman Nationality was certainly 'ordinarily residing' in Cyprus whatever were the motives or reasons which induced him to go to Cyprus originally and he was consequently a British subject. In *Indian Immigration Trust Board of Natal* v. *Govindaswamy*[3] referring to the remark that the interpretation put by theid Lordships on S. 50 of Indian Immigration Act of Natal would lead to irksome results and it was unlikely to be the wish of the Legislature, their Lordships said it might well be addressed to a Legislative body but cannot have weight in the interpretation by a Court of a clause in an Act dated forty years previously when circumstances were very different.

11. Madras.—In *Kesavalu Naicker* v. *Corporation Madras*,[4] the Madras High Court refused to strain or narrow down the meaning of the word 'tenant' as defined in S. 2, Cl. (*iv*) of the Madras City Tenants' Protection Act (III of 1922) merely because the preamble of the Act was more restrictive in its scope than the definition warranted and referred only to 'tenants who constructed buildings on others'.

(2) 1921 P.C. 182.

(3) 1920 P.C. 114.

(4) 1926 M. 381=50 M.L.J. 301=23 M.L.W. 233=92 I.C. 1053, *per* Phillips, J.

lands in the hope that they would not be evicted so long as they pay a fair rent'. It was similarly held that the words 'owning such property by virtue of a title acquired before such sale' occurring in Order 21, Rule 89 of the Civil Procedure Code did not restrict the ownership to one recently acquired.[5] In another case the language of S. 166 (1) of the Local Boards Act was held to be sufficiently plain and the definition of words from English cases could not be accepted in construing the plain language of the section.[6] Where objection was taken to the validity of an election held in 1929 on the ground of its having been held on the basis of an electoral roll of the year 1923-24 which not only contained names of persons who were dead and those unfit to vote but did not contain names of persons who were fit to be voters it was overruled on the ground that it was the duty of the Court to give effect to the section (as it stands) which says the electoral roll published in any year shall remain in force till the publication of a fresh electoral roll and this notwithstanding the fact that the Court felt that to act upon an antiquated electoral roll is to deprive several voters of their votes.[7] In the *Rajah of Mandasa* v. *Jagannayakulu*[8] the Court refused to uphold the jurisdiction of the Board of Revenue on such 'desperate grounds' as the

(5) *Govindaswami Naicker* v. *Perumal Raja and another*, 1927 M. 327=25 M.L.W. 106=38 M.L.T. 30=1927 M.W.N. 53=99 I.C. 893, *per* Jackson, J.

(6) *Veerappa and others* v. *Emperor*, 1930 M. 441=31 L.W. 202=1930 M.W.N. 187=53 M. 439=59 M.L.J. 239.

(7) *Venkataramana Iyer and another* v. *Kuppuswami Iyengar and another*, 1930 M. 954=1930 M.W.N. 676=32 M.L.W. 439=59 M.L.J. 907=129 I.C. 240.

(8) 1932 M. 612 at 619=1932 M.W.N. 350=36 L.W. 292=63 M.L.J. 450=55 M. 883=140 I.C. 331 (F.B.).

existence of lacunae in the Madras Estates Land Act owing to the confusion caused by whole sections being bodily taken from the Bengal Tenancy Act and then making sub-sections of the same into independent sections of the Estates Land Act. Justice Ananthakrishna Ayyar remarked that the policy which induced the Legislature to enact the provisions in question could not be questioned or examined by the Courts. Justice Wallis in 34 Madras 505(F.B.)refused to put a forced and unnatural construction on the language of S. 6 of the Limitation Act (XV of 1877) or to speculate on the reasons for the change in the language in that Act as the meaning of that section was to his Lordship perfectly plain and unambiguous. For like reasons the words 'at the time of the grant of the certificate' in Order 45, Rule 7 (1) of the Civil Procedure Code were held to refer not to the actual issue of the certificate but to the mere granting of it as the language clearly implied read with regard to the scheme and scope of that order.[9] It was held in another case that no reference was permissible to a previous state of the law to construe the terms of the Civil Procedure Code in which the provision as to attachment before judgment was deliberately omitted.[10].

The fact that S. 7 (1) (*a*) of the Criminal Law Amendment Act (1932) was originally directed against 'picketing' of foreign cloth or of liquor did not prevent its being applied to offences arising on account of Anti-

(9) *Arunachalam Naidu* v. *Balakrishna and Co.*, 1925 M. 449=48 M.L.J. 134=21 M.L.W. 147=86 I.C. 201.

(10)*Kothandarama Chettiar and another* v. *Annamalai Pillai and another*, 1925 M.W.N. 169=22 M.L.W. 103=1925 M. 589=48 M.L.J. 406=48 M. 488.

Hindi Agitation as the language was clearly applicable to the latter also and Courts were concerned not so much witd the intention of the framers as with the intention of the Act.[11]

12. **Calcutta.**—In *Satis Chandra Chakravarti* v. *Ram Dayal De*,[12] Sir Asutosh Mukerjee delivering the leading judgment of a Special Bench of the Calcutta High Court, in several ways an authoritative judgment on the interpretation of statutes, had to construe the language of S. 499 of the Indian Penal Code in determining the privilege claimed for a witness who made a defamatory statement in the course of a judicial proceeding. In coming to the conclusion that the privilege was qualified and not an absolute one, his Lordship pointed out that to begin with an examination of the previous state of the law or assumed or supposed policy of the Legislature not to depart from the English Law on the subject was to attack the problem at the wrong end and it was a grave error to force upon the plain language of the section an interpretation which the words do not bear. Reliance was placed in the course of arguments in the above case on the statement of Brett, M.R., in *Munster* v. *Lamb*[13] as to the immunity enjoyed by Judges, Counsel and witnesses but his Lordship refused to read the English doctrine into the provisions of the Indian Penal Code as the exception did not find place in the Code itself and the incorporation of English Common Law into the codified law of India would be in essence to legislate in the guise of judicial interpreta-

(11) *Per* Abdur Rahman, J., in In re *Swami Arunagirinatha*, 1939 Mad. 21=(1938) 2 M.L.J. 863=48 M.L.W. 813=1938 M.W.N. 1105.

(12) 1921 Cal. 1=48 C. 388=22 Cr.L.J. 31=59 I.C. 143 (S.B.).

(13) (1883) 11 Q.B.D. 588.

tion which his Lordship was not prepared to do. In another leading Full Bench Case His Lordship refused to put a forced construction on the words 'at the time the measurement on which the claim is based was made' occurring in S. 52 (6) of the Bengal Tenancy Act as meaning only the measurement made on the occasion of the last preceding settlement or adjustment of rent as there was no escape from the conclusion in whatever view the matter was looked at, that the language was clear and unambiguous and the interpretation according to that language in no wise led to such 'manifest', 'Palpable', 'evident', 'absurdity', 'repugnance', 'incongruity', 'inconsistency', 'inconvenience', 'hardship', 'mischief' or 'injustice' as to justify an attempt by the Court to surmise about the intention of the Legislature and not to abide by the ordinary and grammatical sense, the simple and literal interpretation of the words used.[14] A plain reading of the words of a statute led the same Court to construe in *Bijoy Kumar Addy* v. *Corporation of Calcutta*[15] that premises No. 56, Chetla Road, described as a Jamahata or Darjihata as 'a place of trade where there is a collection of shops' and to hold accordingly the declaration of the same as a bazaar by the Corporation of Calcutta was not *ultra vires* though the sellers of commodities assembled at the said place only on one day and had no sort of right of occupying any particular place for the sale of their commodities. Reference was made in the above case to the two English cases *Palmer* v. *Thatcher*[16] and

(14) *Nilamani Kar and others* v. *Raja Sati Prasad Garga Bahadur and others*, 1921 Cal. 397 (F.B.).

(15) 1933 Cal. 322.

(16) (1878) 3 Q.B.D. 346=47 L.J.M.C. 54.

Rothschild v. *Inland Revenue*[17] in the latter of which Mathew, J., was clearly of opinion that the documents referred to therein were not intended to be taxed but his Lordship felt that his limited function was not to say what the Legislature meant but to ascertain what it said it meant. Where the question was whether limitation runs from the date of the final publication of the record-of-rights or from the date of the final certificate, in regard to suits under S. 111-B of the Bengal Tenancy Act, it was held time ran from the earlier period (notwithstanding the fact that the language of the section led to a manifest contradiction of its apparent purpose and to some inconvenience not presumably intended) on the ground that the language of the statute could not be modified unless it was impossible to resist the conclusion that the Legislature could not have intended what its words signify and the influence of such irresistible conviction was wholly wanting in the case.[18] The plaintiffs in the above case on account of giving effect to the plain language of the Act secured a deduction of three months in computing the period of limitation. In one case the Court refused to cut down the deliberately used general language of sub-S. (1) of S. 139 of the Calcutta Municipal Act (1923) notwithstanding the fact that the drafting of the Act was by no means happy or accurate.[19] It was not permitted to interpret 'any suit' as excluding any suit which had already been instituted.[20] In a recent case the Calcutta High Court held that 'laws' understood in their

(17) (1894) 2 Q.B. 142=58 J.P. 399.

(18) *Jogendranath* v. *Baidyanath*, 1930 C. 767.

(19) 1930 C. 770=52 C.L.J. 100=34 C.W.N. 1054=130 I.C. 283.

(20) *Mrinalini Debi* v. *Harlal Roy*, 1936 C. 339.

general sense comprehended laws of all kinds and not only laws in general or in the abstract but rules of law in concrete cases also and that the declaration contained in sub-Ss. 1 and 2 of S. 4 of the Assam Bijni Succession Act (II of 1931) is law within the meaning of S. 65 of the Government of India Act.[21] In a much earlier case where Dr. (As Sir Asutosh then was) Asutosh Mukherjee contended that S. 13, C.P.C.; was not clearly worded that the literal construction led to many anomalous results and that a reasonable construction required that not only should the Court which tried the former suit be of jurisdiction competent to try the subsequent suit but that even the judgment in the former suit should be open to appeal in the same way as the judgment in the latter suit, the Court pointed out it was a matter for the Legislature and not for the Court to consider and the Court could not attempt to make a new or a better law.[22]

13. **Bombay.**—In the Bombay High Court again, there are several instances of the rigid application of the golden rule. In *Hatimbhai Hassanally* v. *Framroz Eduljee Dinshaw*[23] in deciding whether a suit for sale by the mortgagee was 'a suit for land' within the meaning of Cl. 12 of the Letters Patent, Marten, C.J., deprecated the idea of making any reference to the Code of 1859 with its numerous clauses and applying the construction of the same to an entirely different document like the Letters Patent. It is interesting to note that in this case the despatch of the Secretary of

(21) *Debendra Narain Roy* v. *Jogendra Narain Deb and others*, 1936 C. 593.

(22) 25 Cal. 571.

(23) 1927 B. 278=29 Bom.L.R. 498=51 B 516=104 I.C. 8 (F.B.).

State which accompanied the Letters Patent of 1862 was sought to be presented to their Lordships for their consideration while Justice Fawcett himself secured from the Asiatic Library the Report of the Commons who were appointed in 1853 to consider the amalgamation of the Supreme Court and the Company's Courts and the draft rules they prepared. Marten, C.J., pointed out however, that it was wrong to look at either document for the purpose of construing S. 12 and that personally he failed to see how the opinion of an officer of the Government Department written some nine years before the Letters Patent however exalted he was, can have a relevancy or bearing in a law Court on the construction of an Act of Parliament any more than it was admissible to look into the Debates in Parliament or the Statement of Objects and Reasons and how even if the letters could be perused it would necessitate a looking into the replies sent to them and so on *ad infinitum*. Justice Fawcett, however, was of opinion that there was an ambiguity in the case and that the Court must resort to other sources of information to decide the expression in Cl. 12. Mirza, J., was of the same opinion but the majority of the Full Bench agreed with the view of the Chief Justice and held that 'suit for land' referred to suits to obtain or recover land or alternatively to suits which substantially involved the recovery of land or its equivalent and that title to or possession of immovable property must be the primary object of an action to bring it within that definition. Patkar, J., who agreed with the majority view pointed out that *contemporanea exposito* as a guide to the interpretation of documents was often attended with danger and great caution should be observed in its applica-

tion.[24] and that what the Legislature intended should be ascertained from that which it has enacted in express words or by reasonable and necessary implication.[25] On similar grounds Telang, J. held that where the words are wide enough judicial interpretation ought not to limit their scope either on general considerations or on account of the absence of decided cases.[1] In another case even though no rate of interest was specified in a pronote it was held that interest at six per cent. had to be paid from the date of the note from a plain reading of S. 80 of the Negotiable Instruments Act.[2]

14. Allahabad.—A Full Bench decision of the Allahabad High Court has laid down in *Ram Sahai Sing* v. *Debi Din*[3] that the Court should in each case apply the admitted rules of interpretation without deviating from the literal sense of words without a sufficient or a justifiable reason though it was not bound to slavishly adhere to them where to do so would defeat the intention gatherable from the whole statute. The majority of the Judges accordingly held that S. 9 of the Bundlekhand Alienation Act (II of 1903) did not apply and that where the mortgagee is also a member of the agricultural tribe though he cannot bring the property to sale in execution a remedy can be given to the mortgagee by providing for foreclosure. Daniels,

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(24) *See* the judgment of Patkar, J., in 1927 B. 278 at p. 351.

(25) *Salomon* v. *Saloman and Co.*, (1897) A. C. 22=75 L.T. 426=66 L.J. Ch. 35=45 W.R. 193=4 Manson 89.

(1) *Queen-Empress* v. *Balakrishna Vithal*, 17 Bom. 573.

(2) *Ganpat Tukaram Mali* v. *Sopana Tukaram Mali*, 1928 B. 35=30 Bom.L.R. 1=52 B. 88=107 I.C. 257.

(3) 1926 All. 617 (F.B.).

J., observed in the above case that there was undoubtedly a hiatus in the Act which required the attention of the Legislature but he was bound to interpret the Act as it stood. On a plain reading of the words it was held in a matter under the Civil Procedure Code that where the two suits were identical the failure of the first suit must bar the trial of the second suit even if no issues are raised in the former suit.[4] It is irrelevant to hold an enquiry as to the intention with which an execution application was filed if it was made to the proper Court and was in accordance with law for purposes of Art. 182 (5) of the Limitation Act.[5] In one case in the Oudh Chief Court where there was a difference of opinion between two judges and the matter was referred to Simpson, A.J.C., under S. 98 of the C.P.C. as to the validity of a will made in favour of an agnate who was not the nearest agnate the learned Judge adopted the novel precedent of interrogating himself in the plain terms of the statute without entering into a consideration of other matters.

'*Q*:—Would Achal Sing have succeeded to the estate if the testator had been intestate?

A:—No.

Q:—Why not?

A:—Because he would have been excluded by nearer heirs.

Q:—Might he in the absence of other heirs have succeeded to the estate?

A:—Yes.'

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(4) *Majidan* v. *Sabir Ali and others*, 1928 All. 62.

(5) *Kayastha Co., Ltd.* v. *Sitharam Dubey*, 1929 All. 625 (F.B.).

The will in question was held to be governed by S.13-A(2), Oudh Estates Act (I of 1869), amended by U.P. Act (III of 1910).[6] In another case the same Court relying on *Leader* v. *Duffey*[7] held that the provisions of the Oudh Rent Act cannot be construed in the light of the rules of Mahomedan Law which might have been in force prior to the passing of the Act or in the light of the assumed intention of the Legislature.[8] There is no justification for reading into Cl. (5) of S. 7 of the Court-Fees Act, 1870, the word 'proprietary' as qualifying the nature of possession in suits for possession.[9] Where a legatee died during the lifetime of the testator the benefit of S. 109 of the Succession Act (1925) was held to devolve not only on the lineal descendants of the legatee but in favour of all his heirs,[10] as the Court felt there were no adequate grounds for departing from the language of the Statute.

15. **Lahore.**—In the Lahore High Court it was held not permissible to add to or subtract from the definition of 'instrument of partition' given in S. 2 (15) of the Stamp Act as Article 45, Schedule I of the Act is exhaustive in itself and it would be illegal to graft any exceptions or impose any limitation on Article 45 and a decree was accordingly not admissible without payment of stamp duty and penalty.[11] Similarly there is no justification for reading into Order 21, Rule 89,

(6) 1926 Oudh 2.

(7) (1888) 13 A. C. 294.

(8) 1930 Oudh 274.

(9) 1931 Oudh 366.

(10) *Mahomed Yaqub Khan and another* v. *Mt. Azizunissa and others*, 1935 Oudh 437.

(11) *Abdul Hussain Khan* v. *Mt. Mahmudi Begum and others*, 1935 Lah. 264.

C.P.C. words that are not there and in refusing relief to a judgment-debtor who had deposited the amount mentioned in the sale proclamation on the ground that the decree-holder was entitled to other items not included in the proclamation.[12] It is not legal or permissible to construe the word 'pensions' used in Cl. (*g*) of S. 60 (1) of the Civil Procedure Code with reference to the provisions of the Pensions Act as the term 'pension' was neither a technical term nor a term of art and should be understood in its etymological sense of a periodical payment made by Government.[13]

16. **Patna.**—The Patna High Court held that 'property' in S. 2 (*d*) of the Provincial Insolvency Act was wide enough to include the power of a Hindu father to sell his son's share in the family property for the payment of his legitimate debts.[14]

17. **Sind.**—The Judicial Commissioner's Court at Sind held that grammatically and logically the words 'such statement' in S. 162, Cr. P. C., refer to oral statements and not to oral statements reduced to writing.[15]

18. **Nagpur.**—In *Narayanadas and another* v. *Kanai Lal and another*[16] it was held by the Nagpur Judicial Commissioner's Court with reference to S. 107 of the Contract Act which makes notice a condition precedent to the lawful exercise of the power of re-sale that the absence of such notice could not be explained away by referring to the supposed object of the rule as it would

(12) *Mt. Uda Bai* v. *Ram Autar Sing*, 1935 Lah. 423.

(13) *Achhru Mal* v. *Balwant Sing and another*, 1937 Lah. 178.

(14) *Biswanath Sao and others* v. *Official Receiver and others*, 1937 Pat. 185 (F.B.).

(15) *Emperor* v. *Hari and others*, 1935 Sind 145.

(16) 1924 Nag. 162 (2).

require a preliminary investigation into the likelihoo of any mischief resulting in each case before the appli cation of a general rule expressed in unambiguous langu age. The same Court in *Prayagarao* v. *Distric Council, Betul*[17] held that the term 'market' used i S. 23 (1) of the C.P. Local Self-Government Act (1920) should be construed according to the meaning attached to it under S. 2 (2) and cannot be restricted so as tc mean 'public market' though such a construction would be making an inroad on the private rights of proprietors and however 'unjust, arbitrary, inconvenient' the mean ing conveyed may be, as the language was clear and beyond doubt. It was held that to do otherwise would be to amend the Act and it was not the duty of a Court to make a law reasonable but to expound it as it stands.

19. **Rangoon.**—A case of fraud was held to make no exception to the general rule enunciated above, by the Rangoon High Court which held that if there is no certification of adjustment as required by Order 21, R. 2, Cls. (2) and (3) a judgment-debtor was not enti tled to ask for an extension of time within which to make an application even though the conduct of the Decree-holder was fraudulent.[18]

(17) 1932 Nag. 105.

(18) *P. R. P. L. Chetty Firm* v. *G. Lon Pow*, 1923 R. 103.

CHAPTER II.

Limitations to the Golden Rule.

1. Language Defective.—If there were no limitations to the applicability of the Golden Rule of construction and if it were universal in its application the task of the interpreter would become the easiest indeed. If words were always precise and unambiguous and the language clear and capable of but one meaning a large part of the laws of interpretation would become unnecessary. In actual fact, however, cases of such unmistakable precision and accuracy in the use of language are rare; nor is it always the case that the most adept draftsman can always find at hand language which exactly expresses the intention he has in view so as to absolutely eliminate equivocation or alternative construction and in all cases allow no room for ambiguity or secondary significance.

2. Draftsmanship inartistic.—If language were neither redundant nor defective and if the letter of the law equally conveyed its spirit also, no more would be necessary than to observe the Golden Rule. But language is both redundant and defective; words convey sometimes much more than is intended by their usage and as often fail to convey a great deal of what their usage is legitimately intended to convey. Human language is flexible, and is susceptible of being used in more than one sense and a rigid interpretation of its literal meaning often leads us astray from the real meaning intended to be conveyed by it even in cases

where the language (such as that employed in drafting a statute) is apparently clear, carefully selected and employed by skilled hands. It is not always the case that the grammatical or the etymological sense is the correct one nor could it always be postulated that the popular sense is the safest guide to correct interpretation. The meaning depends on the subject or occasion on which the words are used and the object that is intended to be attained by the statute employing them.[1]

Added to the difficulties inherent in language, account has to be taken oftentimes of the incompetence of legislative draftsmanship and the several channels it has to pass in these days of modern legislation necessarily introducing variety of styles and thought and oftentimes making the original confusion worse confounded. Farwell, L. J. comments on the fact that even in England with its highly developed Parliamentary system and legislative methods, Acts of Parliament are not drafted with such accuracy and precision as to justify a Court in striking out unambiguous words to make a sentence grammatical or logical.[1a] In India the difficulties of the interpreter are rendered even more onerous on account unskilful or careless daftsmanship. Judicial comments on the inartisticity in the drawing up of statutes have been many and varied but the observations of Dalal, A. J.C. in 1926 Oudh 2 deserve attention. 'In my opinion', says the learned Judge 'Codification in India is to a certain extent a gamble. First of all Indians have to express themselves in a language which is, after all foreign to them. Local Government do not command

(1) *Rex* v. *Hall*, (1882) 1 B and C. 123 at 136.
(1-a) *Lowe* v. *Dorling and Son*, (1906) 2 K.B. 772 at 784.

the help of men trained in drafting laws and even at the time of legislation I do not think that it is settled accurately and in detail what a particular Act is required to provide for. There are vague notions to remedy an evil or to satisfy certain sentiments, but the full details are not worked out.....arguments as to what the Legislature desired or did not desire leave me unimpressed'. Mr. Wynes gives expression to the same feeling when he complains that it is no less true to-day than it was in 1900 that clarity in legislation is a rare phenomenon and the failure to achieve the expected results is attributable more to the framers of Statutes than its interpreters.[1-b]

3. **Intention primary thing.**—The primary object of all interpretation being the ascertainment of the intention of the Legislature as expressed in its language it becomes necessary to find out the correct significance of words and language where the more literal and obvious meaning does not express such an intention and there are secondary or other meanings which the words bear and which would make the language better reflect the intention of the Legislature than the apparent or popular or grammatical meaning of the same. Maxwell gives examples of how a literal interpretation could easily lead to the evasion of the real spirit of the words by referring to phrases such as 'laying hands on a priest', 'drawing blood in the street', 'to spare a man's head', 'to shed no blood', 'to see one safe in his country' which if literally understood in the context in which they are used would lead to absurd

(1-b) W. Anstey Wynes: Preface to his 'Legislative and Executive Powers in Australia' 1936.

conclusions and in some cases the very reverse of what the words are intended to convey. Words acquire a special meaning in the context in which they occur, with reference to the subject-matter which they deal, the surrounding circumstances in which they are set, the place, trade or the like in which they are used and their ordinary primary meaning may have to give way to a secondary meaning on account of some or all of the above considerations.[1-c] The meaning may also vary according to the period at which the words are used.[2] As Knight Bruce, L.J., observes in *Key* v. *Key*[3] there are several cases in which 'the spirit is strong enough to overcome the letter, cases in which it is impossible for a reasonable being on the careful perusal of an instrument not to be satisfied from its contents that a literal or strict or an ordinary interpretation given to a particular passage would disappoint and defeat the intention with which the instrument read as a whole, persuades and convinces him that it was framed. After all there is no magic in words and the saying goes that he who sticks to the letter sticks to the bark[4] and even a Court of law can correct a mistake if it is apparent on the face of the instrument.[5] Of course the mistake should be clear and without its being corrected it should not admit of any meaningful construction. In the above case the Court decided that the bond which was declared to be void if the man did not pay was only to be void

(1-c) *Bruner* v. *Moore*, (1904) 1 Ch. 305.

(2) *Shore* v. *Wilson*, (1840) 9 Cl. and F. 355 at 525; 5 Scott 958 at p. 1001.

(3) (1853) 4 D.E.G.M. and G. 73 at 84=22 L.J. 641 at 647.

(4) *Qui haeret litera haeret in Cortice* (Co. Litt, 289).

(5) *Wilson* v. *Wilson*, (1854) 5 H.L.C. 40 at 60=23 L.J.Ch. 697 at 703.

in case he did pay. The Court remarked however that it was not a case of going contrary to construction but a question of construction and it struck every one who looked on it that it was a clear error. The result of the authorities in regard to the above matter may be summed up by saying that when the real intention can be gathered from the language within the four corners of an instrument Courts have to supply anything necessarily to be inferred from the terms used and reject as superfluous whatever is repugnant to the intention.[6] As Lord Blackburn put it in *River Wear Commissioners* v. *Adamson*.[7] 'In all cases the object is to see what is the intention expressed by the words used. But from the imperfection of language, it is impossible to know what that intention is without inquiring further and seeing what the circumstances were with reference to which the words were used and what was the object appearing from those circumstances which the person using them had in view for the meaning of words varies according to the circumstances with respect to which they were used'. Lord Blackburn in *Caledonian Ry. Co.* v. *North British Ry. Co.*,[8] after referring to Lord Wensleydale's Golden rule that the grammatical and ordinary sense of the words should be adhered to and also the exception engrafted in the rule itself that a modification can and ought to be made if the literal interpretation leads to some absurdity, or inconsistency to the extent it is necessary to avoid the same and no further explains the reason why a departure is called for in some cases. His Lordship observes:

(6) *Gwyn* v. *Neath Canal Co.*, (1868) L.R. 3 Ex. 209 at 215=37 L. J. Ex. 122 at 126.

(7) (1877) 2 App. Cases 743 at 763=47 L.J.Q.B. 193 at 202.

(8) (1881) 6 App. Cases 114 at 131.

"I agree in that completely but unfortunately in th cases in which there is real difficulty it does not hel us much, because the cases in which there is real diffi culty are those in which there is a controversy as t what the grammatical and ordinary sense of the words used with reference to the subject-matter is. To on mind it may appear that the most that can be said is that the sense may be what is contended by one side and that the inconsistency and the repugnancy is very great that you should make a great stretch to avoid such absurdity and that what is required to avoid it is a very little stretch, or none at all. To another mind it may appear that the meaning of the words is perfectly clear, —that they can bear no other meaning at all and that to substitute any other meaning would be, not to interpret the words used, but to make an instrument for the parties—and that the supposed inconsistency or repugnancy is perhaps a hardship—a thing perhaps which it would have been wiser to have avoided but which we have no power to deal with. The present case is about as good an illustration of that as can very well be." What is absurd to one man may not seem absurd to another.[9] In ex parte *Walton* : in re *Levy*,[10] it was pointed out that a literal interpretation of S. 23 of the Bankruptcy Act would lead to startling and monstrous results, so monstrous that such a construction was deemed to be absurd and it was given up. In the *Caledonian Ry. Co.* v. *North British Ry. Co.*,[11] Lord Selbourne laid down that the more literal construction

(9) *Hill* v. *East and West India Dock Co.*, (1884) 9 App. Cases 448 =53 L.J. Ch. 842.

(10) (1881) 17 Ch. D. 746 at 750.

(11) (1881) 6 App. Cases 114.

ought not to prevail if it is opposed to the intention of the Legislature as apparent by the statute and if the words are sufficiently flexible to admit of some other construction by which that intention will be effectuated to give it that construction.

4. Extrinsic evidence necessary.—It oftentimes becomes necessary therefore to have recourse to other evidence both external and internal within specified limits enunciated in leading cases both in England and India to ascertain the true intention of the Legislature. What are exactly the external matters which can be referred to and what the internal will be dealt with in the succeeding chapters.

CHAPTER III.

External evidence as an aid to Interpretation.

1. History of Legislation in cases of ambiguity.—It has already been pointed out that the limits within which the external circumstances relating to a statute can be looked at in interpreting the same are determined by the extent to which such external evidence affords a key to the ascertainment of the true intention of the Legislature (which in cases of ambiguity or doubt is always presumed to have intended to give a reasonable meaning to words and to avoid, inconsistency, repugnancy or absurdity) and not a step further. Lord Coke has stated in *Heydon's case*[1] as early as 1584 that it was justifiable to consider (1) the state of the law before any Act was passed; (2) the mischief or defect it was intended to avoid or remove; (3) the remedy provided by Parliament; and (4) the true reason for providing such a remedy; in other words the aim, scope and object of a statute are always helpful and relevant in considering or removing an ambiguity and arriving at the true meaning. As Fletcher Moulton, L. J., put it in interpreting an Act of Parliament one is entitled and in many cases bound to look to the state of the law at the date of the passing of an Act, both the common law as well as the law as it then stood under the previous statutes to properly interpret the statute and these may be deemed to form part of the surrounding circumstances at the

(1) (1584) 3 Cokes Rep. 7-*b*=76 E.R. 637.

date it comes to be passed though the extent to which they may be so used depends upon the facts of each case.[2] As Lord Halsbury observes in *Sir Robert Herron* v. *Rathimines Rathgar Improvement Commissioners*[3] the subject-matter with which a Legislature is dealing and the facts existing at the time with respect to which the Legislature was legislating are legitimate topics to consider in ascertaining the object and purpose of the Legislature in framing the Act Vide *Peravali Kotayya and others* v. *Ponnapalli Ramakrishniah.*[4] *Contemporanea exposito est optima et fortissima.*[5] In a recent case[6] the Calcutta High Court has pointed out the logical method of the interpretation of statutes as consisting in the first instance of the impartial and uninfluenced examination of the language without starting an enquiry as to the prior state of the law or its history and without any presumption as to any supposed defects in the former legislation and then to find out if the language yields a clear and unambiguous sense or meaning; and then and not till then to embark upon an examination of the history of the prior legislation. Where in spite of such effort at a plain construction the words appear to be capable of two meanings and are really and fairly doubtful then according to well-known legal principles and principles of common sense "historical investigation may be used for the pur-

(2) *Macmillan and Co.* v. *Dent*, (1907) 1 Ch. 107 at 120=76 L. L. Ch. 136 at 145.

(3) (1892) A.C. 498=67 L.T. 658, quoted in 1937 M. 685 at 688.

(4) 1937 M. 685 at 688=(1937) 2 M.L.J. 573.

(5) A contemporaneous exposition is the best and strongest in law (2 Inst. 11).

(6) *Debendra Narain Roy* v. *Jogendra Narain Deb and others*, 1936 C. 593=64 C. L. J. 272.

pose of clearing away the doubt which the phraseology of the Act creates".[7] If the words admit of two interpretations, they cannot be said to be clear more especially if one of them leads to an absurdity and the other does not.[8] Thus the difference in the phraseology used in the Bijni Succession Act (II of 1931), Assam, was explained with reference to the history of the said Legislation by confining the use of the word 'may' to cases where a power was being conferred and 'may not' to cases where a power already possessed was being curtailed. In *Rex* v. *Bishop of Landa*[9] the words 'after considering the whole circumstances of the case' were held not to mean that a Judge should consider every circumstance of the case but that he must honestly and fairly undertake to consider the circumstances of the case without wilful or unfair refusal to consider any such circumstances.

2. Privy Council on extraneous evidence.—Their Lordships of the Privy Council held that extraneous circumstances such as (1) the previous legislation and (2) decided cases could always be looked at in interpreting the meaning of the words in a statute though the inferences to be drawn from the history of prior legislation were necessarily slight.[10] In the above case the history of the legislation regarding the legal position of women as members of the body politic from the

(7) *The Queen* v. *Most*, (1881) 7 Q.B.D. 244 (251)=14 Cox. C. C. 583=50 L.J.M.C. 113=44 L.T. 823.

(8) *Corporation of the City of Victoria* v. *Bishop of Vancover Island*, 1921 P.C. 240.

(9) (1889) 24 Q.B.D. 213.

(10) *Henrietta Muir Edwards and others* v. *Attorney-General of Canada and others*, 1930 P.C. 120=58 M.L.J. 300=31 M.L.W. 601=126 I.C. 88. *See also* Craies on Statute Law, 3rd Edition, page 118.

earliest times was considered and in concluding that the words 'qualified persons' included 'women' the Privy Council laid down that an Act like the British North America Act should be construed in a large, liberal and comprehensive spirit with regard to the magnitude of subjects it purports to deal in a few words.[11] In another case[12] where it was contended that a substantial change was intended to be made and that it was impossible to arrive at a conclusion without referring to the previous state of the law their Lordships thought it fit to consider how the law stood prior to the enactment of S. 92 of the Civil Procedure Code, 1908 and held that the Legislature did not intend to include relief against third parties in Cl. (*h*) of S. 92 by use of the words, 'further and other relief' and the said words were on general principles of construction held to mean relief of the same nature as in Cls. (*a*) to (*g*) of that section (S. 92) of the C.P.C. The Federal Court of India deemed it proper to refer to the history of Indian Legislation and the legislative practice in regard to the collection of excise duties in construing the scope and meaning of excise duties under the Government of India Act 1935.

3. **Bombay.**—In a Bombay Full Bench case[13] Justice Fawcett in construing the meaning of the words 'suit for land' in Cl. 12 of the Letters Patent held that resort must be had to other sources of information

(11) *St. Catherine Milling and Luzuber Co.* v. *The Queen*, (1888) 15 A.C. 46, quoted in 1930 P.C. 120 *supra*.

(12) *Abdur Rahim and others* v. *Syed Abu Mahomed Barkat Ali Shah and others*, 1928 P.C. 16=32 C.W.N. 482=55 I.A. 96=54 M. L.J. 609=55 Cal. 519 (P.C.).

(13) *Hatimbhai Hussan Ally* v. *Framroz Eduljee Dinshah*, 1927 B. 278=29 Bom.L.R. 498=51 B. 516=104 I.C. 8 (F.B.).

in order to decide the meaning of the words in question as according to him there was unfortunately a difference of opinion between the several High Courts as regards the same while Patkar, J., held that *contemporanea exposito* as a guide to interpretation of documents was often accompanied with danger and great care should be taken in its application. The despatch of the Secretary of State which accompanied the Letters Patent of 1862 and the Report of the Commissioners appointed in 1853 for considering the amalgamation of the Supreme Court and the Company's Courts and the draft rules prepared by them were attempted to be called to aid though Marten, C.J., deprecated reference to those documents as highly irrelevant. In another Full Bench of the same High Court[14] the rule for the construction of obscure enactments stated in *Heydon's case* and approved in *Salkeld* v. *Johnson*[15] and the *Solio case*[16] was held to be still good law. If the meaning of a statutory provision was not clear in itself a Court could always examine the surrounding circumstances that led to or accompanied it as the Privy Council decision in *Baij Nath Sing* v. *Hajee Vally Mahomed Haji Abba*,[17] clearly laid down. In a case arising under the Income-tax Act the Bombay High Court dissenting from a Full Bench decision[18] of the Madras High Court came to the conclusion that there was no express provision in the Income-Tax Act of 1922 laying any obligation on the Income-tax Commissioner

(14) *Wilkinson* v. *Wilkinson*, 1923 Bom. 321 (F.B.).

(15) (1848) 2 Ex. 256.

(16) (1898) A.C. 571.

(17) 1925 P.C. 75=3 R. 106=48 M.L.J. 539 (P.C.).

(18) *Sheik Abdul Kadir Marakayar and Co.*, In re, 1926 M. 1051=49 M. 725=51 M.L.J. 650 (S.B.).

to state a case on an order under S. 33 and the Court had no power to compel him to exercise his discretion in any particular manner relying largely on the difference in the language of the Act of 1918 and the Act of 1922.[19]

4. **Calcutta.**—A similar view was taken by the Calcutta High Court in construing the provisions of the Income-Tax Act (VII of 1918). In a leading Full Bench case of the same High Court Justice Sir Asutosh Mukherjea opined that a reference to the history of prior legislation can only be made when reasonable doubt is entertained as to the construction of a statute as was done by the Privy Council in *Isura Prasad Narain* v. *Lal Chutterput Sing*[20] and *Brown* v. *McLachlan*[21] but that the operation should not be carried too far as it may lead to very undesirable results especially in the case of Codified Statutes.[22] In the said case the previous legislative history of the Indian Penal Code was relied upon not with a view to interpret the provisions of the Code but more to point out how unsafe it would be to interpret the sections of the Code on the erroneous assumption that its framers did not intend to depart from the rules of common law. In another Full Bench case the same eminent Judge laid down that resort to pre-existing law may be useful and legitimate only in cases where the provisions are of doubtful import or are couched in language which has previously acquired a

(19) *Tata Hydro Electric Agency, Ltd.* v. *Commissioner of Income-tax, Bombay,* 1934 Bom. 62=58 Bom. 361=36 Bom.L.R. 23.

(20) (1842) 3 M.I.A. 100=6 W.R. 27 (P.C.).

(21) (1872) 4 P.C. 543.

(22) *Satischandra Chakravarti* v. *Ram Dayal De,* 48 C. 388=24 C. W.N. 982=1921 Cal. 1 (F.B.); also *King-Emperor* v. *Barendra Kumar Ghose,* 28 C.W.N. 170=1924 C. 257 (F.B.)

technical meaning.[23] A distinction was drawn in the above case between a Codifying and an Amending Statute and it was pointed out that while in the former there may sometimes be a presumption that a particular provision was intended to be a statement of the existing law rather than a substituted enactment and from this point of view there may conceivably arise an occasion for an enquiry into the pre-existing law, in the case of an Amending Statute where the manifest intention is to alter the existing law no such reference would be permissible as speculations as to the extent or direction in which the law was intended to be altered must rest on a very slender basis. In one case it was held that the rule that a security bond should be construed strictly applies only when there is no ambiguity in its terms but where such ambiguity exists or a contradiction in its terms, S. 95 of the Indian Evidence Act allows reference to antecedent circumstances and in such cases the security bond can be construed with reference to the order directing security to be given.[24] Reference to the Bengal Cess Manual was prohibited in a case where an attempt was made to construe an Act of the Legislature with reference to it.[25] In *Muntazul Huq* v. *Nirbhai Singh*[1] where there was a difference of opinion between the Judges composing the Full Bench, one of the dissenting Judges held that in the first part of S. 58 of

(23) *Nilamani Kuar and others* v. *Raja Sati Prasad Ganga Bahadur and others*, 1921 C. 397=48 C. 556=25 C.W.N. 230 (F.B.).

(24) *Mohendranath Banerjee* v. *Roy Satis Chandra Chowdary Bahadur and another*, 61 C. 890=1934 C. 569.

(25) *Sheik Intaz* v. *Dina Nath De Sarkar and others*, 1926 C. 856 =53 C. 615=30 C.W.N. 803.

(1) (1883) 9 C. 711 (F.B.). *See* the judgments of Wilson and Mitter, JJ.

the Bengal Act VIII of 1869 it was intended to provide for decrees under Rs. 500 other than those passed under S. 194 of Act VIII of 1859 or S. 210 of the Civil Procedure Code and in the latter part it was intended to lay down a rule of law applicable to the execution of all other classes of decrees but that the Legislature failed to express its intention precisely by the language of section and he felt entitled accordingly to modify the language of the Act in order to carry out the intention of the Legislature while the Judges composing the majority however, held that the language of the Act should be strictly construed and effect should be given to the governing intention expressed in S. 58 that small decrees should not be kept hanging over the heads of judgment-debtors for more than three years.

5. **Allahabad.**—In Allahabad it was pointed out that no deviation would be permitted from the literal sense of the words of a statute except for a sufficient or justifiable reason and that a slavish adherence to words would be equally uncalled for where the consequence of such an act would obviously defeat the intention that could be collected from the whole statute.[2] Justice Walsh was of opinion that the enactment in the above case (Bundlekhand Land Alienations Act) was a prohibitory one and unless the matter about which the dispute arose could be shown to be within the prohibition, the prohibition did not apply.

6. **Lahore.**—The Lahore High Court in *Barru and others* v. *Latchman and others*[3] has fallen in line with

(2) *Ram Sahai* v. *Debi Din*, 49 All. 8=24 A.L.J. 945=1926 All. 617 (F.B.).

(3) 22 I.C. 503=111 P.R. 1913 (F.B.).

the other High Courts in permitting the history of a legislative enactment to be taken into consideration where the meaning of any provision of law is open to doubt.

7. **Madras.**—The Madras High Court has in one of its earliest Full Bench decisions considered the history of legislation regarding the powers under the Letters Patent and held that it had jurisdiction to try original suits against Revenue Officers for acts done by them in their official capacity which were *ultra vires*.[4]

8. **Patna.**—The Patna High Court has held the view that the state of the law at the time the Statute was passed is a matter material to be considered to arrive at the intention of the Legislature.[5]

9. **External evidence to be used sparingly.**—The use of the external evidence afforded by the history of any legislation should be used very cautiously, very sparingly and only when it becomes absolutely necessary. No general rule can be laid down and it would be the duty of the interpreting Judge to decide in each case whether recourse to such history is called for at all. In *Kuar Nageshar Sahai* v. *Kuar Mata Prasad and another*[6] for instance an argument based on the history of the Amending Act (1910) of Oudh Estates Act (1869) that it was intended by the Legislature to ensure that property held under List 11 bequeathed to a possible heir whether the will was registered or not should remain within the Act and that the Court should

(4) *Collector of Sea Customs* v. *Chithambara*, 1 M. 89 (F.B.).

(5) *Dwaraka Mahton* v. *Patna City Municipality*, 1936 Pat. 282=15 Pat. 36=17 Pat.L.T. 123.

(6) 25 O.C. 189=69 I.C. 730=1922 Oudh 236.

construe it accordingly was negatived by the Allahabad Court.

In a Full Bench case from Nagpur, *Amrit and others* v. *Mt. Thagan*,[7] it was pointed out that the principle of interpretation enunciated in *Narendranath* v. *Kamal Basim*[8] that a construction of the provisions of an Act not according to the plain meaning but in the light of the pre-existing law would be destructive of its purpose was distinguished on the ground that while it might apply to a codifying Act it was not applicable to Act II of 1929 which purported not to codify the law but to amend and alter it.

10. Second source of external evidence—Acts in Pari materia.—A second source of external evidence that is often availed of in construing statutes of doubtful or ambiguous import is the light thrown by Acts in *pari materia* though made at different times whether in force or repealed and whether referring to each other or exclusive of each other. They should be taken and construed together where they form a system and are explanatory of each other.[9] Lord Russel of Killowen, C.J., however limited the above rule to cases where there was ambiguity as a matter of fact.[10] The language and provision of prior Acts on any subject and the authoritative construction they have received may be taken into consideration; for it is presumed that the Legislature uses the same language in the same sense unless a contrary intention appears therefrom.[11] The

(7) I.L.R. 1938 N. 115=1938 N. 134 (F.B.).

(8) 23 Cal. 563 (P.C.).

(9) *R.* v. *Loxdale*, 1 Burr. 447.

(10) *R.* v. *Tilterton*, (1895) 2 Q.B. 67.

(11) Maxwell, Interpretation of Statutes, 7th Edition, page 32.

same thing applies to the construction of Acts of similar scope though the language may be different.

11. Subsequent enactments can be looked at.—Srivatsava, J., in a Full Bench case from the United Provinces,[12] quoting from Maxwell with approval a passage noted *supra* held that a Court had no jurisdiction to enquire into the existence of a wakf where it was denied by the Mutwalli though the majority differed from the learned Judge and held that a statute should be construed so as to avoid evasion and that where a duty was imposed by a statute it must be presumed that it was intended to enforce that duty whether a procedure was laid down or not for enforcing such specific performance. In *Purna Chandra Chowdhury* v. *Alep-Biswas*[13] it was held that expressions used by the Legislature in subsequent enactments or amendments of law can be used for the purpose of interpreting earlier enactments and in giving effect to the intention of the Legislature express or implied as far as the particular provisions of law are concerned. In another case it was held that it would be of the greatest use to compare the language in the same Act and the meanings in which a word is used therein as that is the most useful method of arriving at the meaning of an ambiguous word.

12. Acts not in pari materia—Reference objectionable.—But where the Acts are not in *pari materia* but deal with different subjects though the words used may be same it would be highly objectionable to attempt to construe terms of one statute by those of another. As

(12) *Md. Baqr and another* v. *S. Md. Khasim and others*, 1932 Oudh 210=7 Luck. 601 (F.B.).

(13) 1936 C. 64=40 C.W.N. 543=62 C.L.J. 538.

the Privy Council pointed out in *Lawrence Arthur Adamson and others* v. *Melbourne and Metropolitan Board of Work*,[14] 'it is always unsatisfactory and unsafe to seek the meaning of words used in an Act in the definition clause of other statutes dealing with matters more or less cognate even when enacted by the same Legislature and much more so when resort is had to the enactments of other Legislatures'. It is dangerous to attempt to construe an Act by reference to decisions on other Acts quite different in character even though the actual phrase in several Acts is the same.[15] As was pointed out by Krishnan Pandalai, J., in *Bhupathi Raju* v. *Subbarao Panthulu*[16] the Madras Estates Land Act and the Madras Local Boards Act use the same term 'landholder' in two different senses, the differences being due to the two Acts not being in *pari materia* and therefore the application of ideas derived from one Act to questions arising under the other were bound to be wholly misleading, the one Act being designed to regulate the rights of landholder and ryots in an estate and the other to raise a fund for the purpose of Local Self-Government. And the same learned Judge in a more recent case[17] held that Indian Statutes like the Madras Local Boards Act which are from time to time wholly repealed or re-enacted or extensively amended should not be construed by the language of those which they replaced or of similar legislation elsewhere in India or

(14) 115 I.C. 740=1929 P.C. 181.

(15) *Municipal Corporation, Bombay* v. *Haji Eisa Haji Oosman*, 1936 Bom. 49.

(16) 62 M.L.J. 472 at 476=1932 M. 410=55 M. 646.

(17) *Pothuru Swamy Babu* v. *Union Board of Narasannapeta*, 1933 M. 791 at 793=65 M.L.J. 725.

England on an assumption that no change of the law was intended and Courts should not thereby decline to give effect to the words. In *Assan* v. *Pothumma*[18] the same High Court pointed out that the Court-Fees Act and the Limitation Act were entirely different in their purpose and scope and neither can be taken to control or qualify the other. The definition of 'rent' in S. 3 (2) (*b*) of the Madras Estates Land Act could be no guide in the interpretation of the word 'agricultural income' in S. 4 of the Income-Tax Act (1922).[19] In *Srimath Jagathguru Sringeri Sri Satchidananda Chandra Sekhara Bharati* v. *C. P. Duraswami Naidu*[20] a Bench of the Madras High Court dissenting from the opinion of Justice Bhasyam Iyengar in *Murugesa Chetti* v. *Chinna Thambi Goundan*,[21] that 'agriculture' includes 'horticulture' and generally speaking all things useful as food for man or beast or other products fit for human consumption, deprecated the application of the definition of a word in one Act to the definition of another word in another Act especially when the second Act is in force in another country and governed by other circumstances and pointed out that it was likely to lead to several pitfalls. Ananthakrishna Ayyar, J., in the same case observed that general definitions given in Dictionaries would be of use only when there is nothing to the contrary in the context of any particular provision of law which the Courts have to construe. Pronouncements by Courts on other provisions of other

(18) 22 M. 494.

(19) *The Commissioner of Income-Tax, Madras* v. *V. T. S. Sevuga Pandia Thevar*, 1932 M. 757=56 M. 251=63 M.L.J. 634.

(20) 1931 M. 659=54 M. 900=61 M.L.J. 648.

(21) (1901) 24 M. 421.

Acts however useful would not be decisive as authority when we have to construe the provisions of quite a different Act. In several of the English Statutes, *viz.*, Agricultural Holdings Act, Agricultural Rates Act, and other similar Acts the Legislature has chosen to enlarge the meaning of the term 'Agriculture' as it thought fit for the purpose of those Acts. It is therefore not of real use to go to those definitions when we have to construe an Indian Act quite different in its scope and purpose from the English Acts. On similar grounds the Allahabad High Court held the opinion that it is not permissible to construe the provisions of one statute in the light of any judicial decision on the provisions of another statute unless the two are in *pari materia* and identical in terms and that the scope of S. 233 (*k*) of the U. P. Land Revenue Act (1901) was norrower than that of S. 241-F of Act XIX of 1873 the language of the latter being in many respects different from that of the former which had to be construed in the case.[22] It was held in *Govind Ram and others* v. *Kashi Nath and others*[23] that the Stamp Act and Registration Act were not in *pari materia* as the one is a purely fiscal act providing for payment of Government Revenue while the other has for its objective the conservation of evidence, assurance of title and publicity of documents and it was not permissible to interpret a word in one Act with reference to the meaning in the other.

The Bombay High Court in *Municipal Corporation, Bombay* v. *Haji Eisa Haji Oosman*[24] refused to consider

(22) *Mt. Siraj Fatima and others* v. *Mahomed Ali and others*, 1932 A. 293=54 A. 646 (F.B.).

(23) 1936 A. 239 at 251.

(24) 1936 Bom. 49.

the Madras decision cited before it based on Madras Municipal Acts in construing a case under the Bombay City Municipality Act on the ground that it was dangerous to attempt to construe one Act by a reference to decisions on Acts quite different in character notwithstanding the similarity of language in both the Acts. The Madras High Court went further and refused to apply the definition of 'Company' in the District Municipalities Acts of 1884 and 1920 to the words 'incorporated Company' in the Madras City Municipal Act of 1919, though they all related to the same province. vide *Madras Central Urban Bank, Ltd.* v. *Corporation of Madras.*[25]

Reliance on English Law dangerous.—It is dangerous to accept an English case interpreting an Act of Parliament as a guide or authority for the interpretation of the section of an enactment of the Provincial Legislature.[1] Their Lordships of the Privy Council refused on this ground to consider the *Bradford Corporation case*[2] in construing the provisions of the Calcutta Port Act (III of 1890) as the former was based on the Public Authorities Protection Act (1893) in which the words 'purporting or professing to act in pursuance of the statute' occurring in the Calcutta Act which according to their Lordships were of 'pivotal' importance were absent.[3] On similar grounds 'the flood of decisions' on the English Income-Tax Act let loose on

(25) 1932 M. 474.

(1) *Tarachand Prabhdas* v. *Emperor*, 1938 Sind 116.

(2) *Bradford Corporation* v. *Myers*, (1916) 1 A.C. 242=85 L.J. K.B. 146=114 L.T. 83=80 J.P. 121.

(3) *Commissioners for the Port of Calcutta* v. *Corporation of Calcutta*, 1937 P.C. 306=64 I.A. 363=170 I.C. 332 (P.C.).

the Privy Council in *Commissioner of Income-tax* v. *Shaw, Wallace and Co.*,[4] were discarded by their Lordships on the ground that the Indian Income-Tax Act was less elaborate, and subject to fewer refinements than the English Act and differed greatly in language and arrangement from the latter.[5]

13. Judicial decisions helpful in interpretation.—A third source of external evidence which is sometimes resorted to though likewise subject to very strict limitations consists in the decisions of Courts. It has been held to be dangerous to shake the authority or overrule decisions which are manifestly not erroneous and mischievous and which have stood unchallenged for a long time, from the nature and effect they may reasonably be supposed to have produced on the conduct of a large portion of the community including Parliament in matters affecting rights of property and such decisions may therefore be treated as having passed into the category of established and recognised law.[6] *Stare decisis*, to abide by decided matter has long been a maxim of the law. More importance is often attached to the certainty of a rule than to the reason of it.[7] The Privy Council case in 1930 P. C. 120, which is an authority on this matter, has already been alluded to. In *Mt. Moti Bai* v. *Agent, N.W.Ry.*,[8] Jai Lal, J., in construing the term 'unmarried daughter' made a wide reference to English and other authorities and with due regard

(4) *Commissioner of Income-Tax, Bengal* v. *Shaw, Wallace and Co.*, 1932 P.C. 138=59 Cal. 1343 (P.C.).

(5) *Commissioner of Incometax, Bengal* v. *Shaw, Wallace and Co.*, 1932 P.C. 138=59 C. 1343 (P.C.).

(6) Beal: Cardinal Rules of Legal Interpretation, 3rd Edn., p. 16.

(7) *Muthuchidambara* v. *Karuppa*, 7 M. 382.

(8) 1932 Lah. 1=13 Lah. 228.

to the intention of the Legislature to compensate persons who according to the customs and ideas of the people were expected to be maintained by the deceased held that the word 'unmarried' meant 'without having a husband at the time' or 'unmarried at the time', rather than 'not having married at any time' and that a 'widowed daughter' and 'widowed sister' were both intended to be included under the term 'unmarried'. The above decision was followed by the Calcutta High Court in *Agore Chandra Jahri* v. *Raj Nandini Devi and others.*[9]

(9) 1933 Cal. 283.

CHAPTER IV.

Effect of Custom on Interpretation.

1. **Effect of usage on interpretation.**—A further factor that is sometimes taken into consideration in construing ambiguous provisions of a statute is the manner in which it is understood by contemporary authority. Custom or usage which is greatly respected in all countries occupies a supreme place in Hindu Jurisprudence and consequently the authority to be attached to a long and continued usage in the matter of the meaning to be attached to the words of the Legislature acquires a peculiar sanction and approval of the Legislature whose long acquiescence is considered to be a proof of the same.[1] The intention of the Legislature however is to be ascertained by reference to the meaning of the words used at the date when the statute was passed. This particularly applies to the interpretation of ancient and obscure laws, for as Lord Campbell put it in *Gorham* v. *Exeter*[2] 'were the language obscure instead of being clear, we should not be justified in differing from the construction put upon it by contemporaneous and long usage. A common error, it has been said makes a right: *Communis error facit jus.* There would be no safety for property or liberty if it could be successfully contended that all lawyers and statesmen are mistaken as to the true meaning of an old Act

(1) *Optimus interpres rerum usus* (2 Inst. 282); the best Interpreter of things is usage.

(2) (Bp.) 15 Q.B. 73 quoted at p. 262 of Maxwell's Interpretation of Statutes, 7th Edition.

of Parliament'. This can, however, apply only to old and obscure laws and not to plain or recent legislation. Where, however, a course of practice is founded on an erroneous construction of a statute there is no principle which precludes the Court from correcting the error. To hold that the matter is not open to review in such cases as that would be virtually to give effect to an adjudication contrary to the intention of the Legislature merely because it has happened for some reason or other to remain unchallenged for a length of time.[3]

2. Lord Brougham laid down the doctrine of interpretation based on practice or usage in *Dumber* v. *Duchess of Roxsburgh*[4] in the following terms:

"Where a statute speaking on some points is silent as to others, usage may well supply the defect, for where the statute uses the language of doubtful import the acting under it for a long course of years may well give an interpretation to that obscure meaning and reduce that uncertainty to a fixed rule.....but it is quite plain that against a plain statutory law no usage is of any avail". In other words as Lord Cottenham explained in another case,[5] where a decision first arrived at is adhered to subsequently in a long course of decisions and confirmed by other decisions, the matter is said to be governed by a long current of authorities too strong to be resisted and has the effect of a correct interpretation of the point involved. Lord Westbury has stated the same rule by pointing out that that the

(3) *Daily Gazette Press, Ltd.* v. *Karachi, M. C.*, 14 A.C. 209 quoted in 1930, S. 287.

(4) (1855) 3 Cl. and F. 325.

(5) *Waterford Peerage Claim*, (1832) 6 Cl. and F. 133.

uniform interpretation of a statute on a matter materially affecting property recurring constantly and adhered to without interruption cannot be disregarded and it would be impossible to set up a precedent for disregarding such a long-adopted interpretation. Else there would be no safety for property or liberty.[6] It is of course essential that the decisions should be uniform[7] and there should be ambiguity in the language to be interpreted.[8] In a somewhat recent case reported in *Ramakrishna Jha* v. *Jainandan Jha*,[9] Justice Wort, after laying down the principles enunciated in the above decisions pointed out that the principle of *cursus curiae* or the rule of practice meaning thereby the practice of the Court in deciding the construction in a particular manner can be applied only subject to three restrictions (*i*) the statute should be ambiguous; (*ii*) the decisions on which it is based should be uniform throughout; (*iii*) the decisions must have affected titles or rights to property. The Full Bench in the above case held that where the lessee executed a registered Kabuliyat in favour of the lessors and the lessors accepted it by means of an unregistered amalnamah, no valid lease as contemplated in S. 107 of the Transfer of Property Act was constituted as the Kabuliyat executed by the tenant could not be a lease and the acceptance by the lessor could not be proved either by the amalnamah or by oral evidence. There was no room in the case for the application of the principle of *cursus curiae*.

(6) *Morgan* v. *Crawshay*, (1871) 5 H.L. 304=40 L.J.M.C. 202 =24 L.T. 889=20 W.R. 554.

(7) *Reid* v. *Reid*, (1886) 31 Ch. D. 402=55 L.J. Ch. 294=54 L.T. 100=34 W.R. 333.

(8) *Rex.* v. *Tipton*, 3 Q.B. 215.

(9) 14 P. 672=16 P.L.T. 451=1935 P. 291 (F.B.).

3. There is no other country perhaps where custom has such an overriding effect as in India where *acharam* is said to be *paramodharmah*. Amongst the Hindus especially, custom is said to outweigh the written text of the law. The same is the case with trade customs which prevail over the law merchant. But where the customary law has been codified and specific provisions have been made embodying the same they cannot be varied by reference to a custom especially one inconsistent with the statute except where the statute itself makes an exception in favour of custom in its saving clause. The Indian Succession Act (X of 1865) contains no clause saving custom and courts are accordingly not competent to deviate from the plain provisions of an Act relying on custom.[10] The Madras High Court relied upon the long practice obtaining in the Presidency in construing a somewhat difficult provision in the Income-Tax Act relating to profits claimed to have been earned by a Co-operative Bank. In the *Madras Provincial Co-operative Bank, Ltd.* v. *Commissioner of Income-tax*[11] in holding that interest from Government securities is not 'profits' earned by a society within the meaning of the Income-Tax Act their Lordships pointed out that where the Legislature follows a certain practice and repeats the very words on which that practice is founded it should be inferred that the Legislature in re-enacting the statute intended that the words repeated should be understood in their long accepted meaning and that while interest was certainly taken into consideration in arriving at the profits of a

(10) *Tuni Oraon* v. *Leda Oraon*, 36 I. C. 206.
(11) 1933 M. 489=56 M. 837=64 M.L.J. 640.

society it did not necessarily follow that it was profits and it was customary to tax such profits under S. 8 of the Act. In *Krishnamurty Iyer* v. *Krishnamurty Iyer and another* [12] the Privy Council had to consider the effect of custom on what were undoubtedly invalid arrangements according to their Lordships but which were acted upon for a long series of years in India and had accordingly affected several completed transactions and dispositions of property under what were known as ante-adoption agreements. In the matter of disposition *inter vivos* or by will of property by a full owner under which a portion of the property is given away the rights of a subsequently adopted son cannot invalidate the same. But where the adoption is antecedent to the date when the disposition is to take effect the rights which flow from adoption being immediate, the rights under the disposition being inconsistent with such rights cannot '*vi proprio*' affect them. The natural father cannot be the guardian of his son after his adoption into another family and he cannot bind the interest of a son as to property which he cannot have till the time when the guardianship has ceased. Neither the doctrine of approbate and reprobate nor the doctrine of conditional adoption can avail in such a case. The adopted son cannot undo the adoption and be as he was before under any circumstances. But it was pointed to their Lordships that there were several instances where agreements were entered into at the time of adoption contrary to the above principles and they had ripened into a custom sanctioning such arrangements and regulating the rights of the widow as against the adopted son, one of the material incidents

(12) 50 M. 508=53 M.L.J. 57=1927 P.C. 139 (P.C.).

of the custom being that the consent of the natural father was evidence of the arrangement being for the best advantage of the boy and that the mere postponement of his interest to the widow's even to the extent of a life-interest in the whole property is not incompatible with his position as adopted son. The validity of the arrangements however, while being upheld was restricted to the exact scope of the custom proved and where they went beyond the same or transferred property absolutely or to strangers they were held to be invalid and opposed to the radical view of the Hindu Law.

4. Again, it has been held that custom cannot override the positive prescriptions of the Limitation Act.[13]

(13) *Mohanlal* v. *Amrit Lal*, 3 Bom. 174 at 177; *also cf.* 32 M.L.J. 71=44 C. 379=44 I.A. 42 (P.C.).

CHAPTER V.

INTERNAL EVIDENCE AS AN AID TO INTERPRETATION.

I

GENERAL CONSIDERATIONS.

1. All parts of a statute to be read together.—It is one of the cardinal rules of interpretation that all parts of an enactment should be construed together and not each part by itself and where the language is not unambiguous but is capable of bearing more than one meaning and historical investigation as to the prior legislation does not afford any key to the true sense of the words used, the internal evidence afforded by the several parts of the Act may supply an important clue to the meaning, import and scope of any provision. A statute should be so construed if possible as to make no part of it superfluous, void or insignificant and the significance of many a doubtful term may be made understandable by such an attempt to reconcile the several parts together. It is a well-accepted maxim of interpretation that an enactment includes all the incidents or the consequences necessarily resulting from it.[1]

2. Setting and context of words to be looked at.—In the *Vacuum Oil Co.* v. *Secretary of State*,[2] the Privy Council in upsetting the judgment of the learned Chief

(1) *Jai Inder Bahadur Sing* v. *Brij Indar Kuar*, 5 Luck. 80=1929 Oudh 231=117 I.C. 748 (F.B.).

(2) 56 B. 313=59 I.A. 258=1932 P C. 168 (P.C.), reversing the judgment in 1930 Bom. 597.

Justice of the Bombay High Court pointed out that the Sea Customs Act (VIII of 1878) was a 'composite' enactment and the learned Chief Justice in the Court below erred in dealing with its provisions separately as though each stood by itself and that he ought to have availed himself of the light thrown on each of the expressions by the presence within it of others and ought to have paid attention to the setting or context in which the words were used. Their Lordships read a definite purpose in Ss. 29 and 30 to define a 'price', 'conservative in its every aspect and free in particular from any loading for any post-importation carge incurred in relation to the goods'. The consideration that the 'price' in the case was a 'net price', *i.e.*, less trade discount supplemented by other considerations led their Lordships to understand the correct significance of the word 'wholesale price' in contradistinction to 'retail price'. In arriving at this conclusion their Lordships took stock of the (*a*) well-recognized meaning of words, (*b*) the association with the word 'trade discount' indicating that sales to the trade were in contemplation, and (*c*) the fact that wholesale price is a price relieved of the loading representing post-importation expenses which as a matter of business are always charged to the consumer and which were so carefully eliminated in the case. Their Lordships further pointed out that if the question of construction had to be determined solely by reason of the word 'cash' in the definition, their Lordships would have been in agreement with the Chief Justice but for a proper construction the surrounding circumstances had also to be looked at. Again in *Henrietta Edward's case*[3] their Lordships looked at the

(3) 58 M.L.J. 300=1930 P.C. 120 (P.C.).

internal evidence afforded by the British North America Act of 1867 itself for a proper interpretation of the word 'qualified persons' in judging whether it included women. In *Union of South Africa* v. *Simmer and Jack*,[4] the proposition was laid down that where a piece of legislation does not profess to have been reduced to an accepted conventional form the meaning should be gathered from the instrument as whole.

3. Object and spirit of the statute to be considered.— In the *Mercantile Bank of India* v. *Official Assignee of Madras*[5] it was pointed out that of the two alternatives, carelessness and intentional use of a term the latter should be presumed and that words should be interpreted according to usage and the meaning given in the Act and it was held accordingly that the word 'person' in S. 178 of the Contract Act (1872) includes the owner of the goods not in possession of the goods and is not restricted only to 'mercantile agent'. In *Narayanaswami Naidu* v. *Rangaswami Naidu*,[6] the Court felt justified in referring to the history of Order 21, Rule 2 of the C. P. C., as well as its place in the whole scheme of execution and it was pointed out in another case of the same High Court, *Rachamadugu Rangiah and others* v. *Appaji Rao*,[7] that undue importance should not be attached to a single phrase or clause in one section and the clear provisions in other sections which are of a general character overlooked. In re *Pre Audience of*

(4) 1918 P.C. 161 at 167.
(5) 1933 M. 207=56 M. 177=64 M.L.J. 320.
(6) 1926 M. 749=49 M. 716=50 M.L.J. 547.
(7) (1927) M. 163=51 M.L.J. 719=50 M. 300.

the Advocate-General[8] the internal evidence afforded by the Bar Councils Act (Amended in 1927) together with a consideration of the object and spirit of the Statute led the Court to interpret the term 'Advocate-General' as meaning a person who for the time being is legally entitled to exercise the powers of an Advocate-General notwithstanding the hypothetical argument advanced by Mr. Coltman that it might be possible not only for the acting Advocate-General but the permanent incumbent to be present in Bombay and to have both leisure and time to attend the Bar Council Meeting of which he is the President—*ex officio* under the Statute. Where the meaning, the object and the spirit of the Statute are clear, from the title, preamble or otherwise it should not be reduced to a nullity by a literal following of the language or the words used which may be defective due to a want of skill on the part of the draftsman. Accordingly in a case arising under the Workmen's Compensation Act the Calcutta High Court construed the words 'unmarried daughter' as including a 'widowed daughter' on the ground that the Legislature sought to give the connotation of 'dependants' by setting out description of certain relatives, and one of these descriptions being uncertain, it was relevant to consider who according to ordinary notions of people are regarded as dependants. After referring to the primary and secondary meaning of the word 'unmarried' and its meaning in several standard dictionaries such as Murray's Johnson's and Stroude's Judicial Dictionary and the authorities on the point it was pointed out that the word is a flexible or equivocal term capable

(8) 1932 B. 71=33 Bom.L.R. 1500 (F.B.).

of two constructions and the context in the Act had to determine what was the real meaning. It follows that the true meaning and the exact scope and significance of any passage occurring in any Statute may be found not merely in the words of the passage but on a comparison of the same with other parts of the Statute and the intention of the Legislature ascertained in that way.[9] In the *Madras Central Urban Bank, Ltd.* v. *Corporation of Madras*,[10] the High Court held that the word 'Company' had not acquired any technical or restricted or well-recognized legal meaning and construed it according to the context and its ordinary non-technical non-metaphorical sense and held accordingly the Madras Central Urban Bank, Ltd., and the Madras City Co-operative Bank, Ltd., were liable to Companies' tax under S. 110 and hence were exempted from payment of profession tax under S. 111 (which applied only to persons who were not liable to pay Companies' Tax under S. 110).

4. And its subject-matter.—And generally it may be stated that words of doubtful or ambiguous import are best understood in the sense in which they fit in with the subject-matter of the Statute and the object it is intended to advance, the occasion and the context in which it is used, in a word, the setting in which it is placed with reference to the rest of the Statute. As has already been pointed out it is not the grammatical, the etymological or even the popular meaning that is necessarily the correct meaning but that meaning which

(9) *Agore Chandra Jalui* v. *Raj Nandini Devi and others*, 1933 C. 283=60 C. 289=36 C.W.N. 924.

(10) 1932 M. 474=62 M.L.J. 720.

would harmonize it with the subject-matter in dealing which the word is used.

5. Illustrations.—Thus for example the words 'dwell' and 'reside' have been variously understood according to the Statute in which they occur and the context in which they have to be construed. In one case Justice Subrahmani Iyer held that the presence of the defendant in Madras when the suit was instituted was enough 'dwelling' within the meaning of the Letters Patent to enable the High Court to exercise jurisdiction over him. It was pointed out that the word 'dwell' ought not to be understood to have been used in any narrow or technical sense and instances were cited where the early Judges of the Supreme Court of Calcutta held that a short stay of twenty-four hours was enough for the Court to exercise jurisdiction.[11] Similarly it was pointed out with reference to several other cases that residence on the part of a person for three months at one place the rest being spent entirely outside it, the taking of a room in a hotel and receipt of letters addressed to that place, the casual stay of an officer at Burma going on leave to England stopping for a few days at Madras, on his way, the stay for four days of the Resident of Kolhapur at Bombay, were all sufficient to bring the respective persons within the jurisdiction of the respective Courts on the ground that they 'dwelt' or 'resided' within it.[12] The word 'person' in S. 115 of the Indian Evidence Act was held to include 'a minor' and not necessarily a person competent to contract though it was held by reference to the provisions

(11) *Punchananda Bose* v. *Davison*, Mort. Rep. 149.

(12) *Srinivasamurty* v. *Venkatavarada Iyengar*, 29 M. 239.

of the Contract Act that he was not estopped from setting up his minority to avoid a contract entered into by him representing himself to be a major.[13] The word 'ostensibly' in S. 58 (*c*) of the Transfer of Property Act which refers to a mortgage by conditional sale meant either that the object bore a particular appearance though it was not really that of which it bore appearance or that the object bore a certain form or appearance without any suggestion as to whether it was or was not the appearance of that of which it bore the superficial appearance and that the first was the proper and correct meaning to be adopted with reference to the context.[14] The word 'suit' under S. 2 (10) does not include an application and S. 22 of the Limitation Act does not apply to applications under Order 9, Rule 13 though the term is used in a broad sense in the procedural Codes.[15] Income from fisheries is not agricultural income for purposes of income-tax though it may be included in the term 'rent' as defined by the Madras Estates Land Act.[16] The words 'act purporting to be done' under S. 80 of the Civil Procedure Code on the surface and by their mere grammatical form include a future act but when the idiomatic use and the consequences of the two possible interpretations were considered it was confined to past acts only.[17] 'Case

(13) *Khan Gul and another* v. *Lakha Sing and another*, 9 Lah. 701 =1928 L. 609 (F.B.).

(14) *Mt. Mumtaz Begum* v. *Mt. Lachmi and others*, 1929 All. 174 =116 I.C. 807.

(15) *Audhi Rai and others* v. *Emperor*, 1923 P. 88=2 P.L.T. 771= 62 I.C. 536.

(16) *Commissioner of Income-tax, Madras* v. *V. T. S. Sevuga Pandya Thevar*, 56 M. 251=63 M.L.J. 639.

(17) *Arunachalam Chetty* v. *Official Receiver, Ramnad*, 1927 M. 166=50 M. 239=51 M.L.J. 671.

under S. 115' of the C. P. C. is wide enough to include an interlocutory application.[18] A 'carriage' under the bye-laws of the Calcutta Municipal Act (1899) includes a motor car.[19] Decision embraces matters of both Civil and Criminal Law.[20]

II.

Component parts of a Statute.

1. **Parts of a statute.**—A statute is divisible into five parts: (*i*) The title, (*ii*) The preamble, (*iii*) The interpretation clause, (*iv*) The enacting clauses, (*v*) The schedules. It has to be seen what part each of these component parts plays in the construction of the Statute as a whole or of its doubtful and ambiguous parts.

2. **The title.**—Under the English Law it was at one time considered inadmissible and generally open to great doubt whether the title of a Statute was a part of the law and could be taken into consideration in construing the Statute embodying that law.[21] It has since been held, however, that the Title is a part of an Act of Parliament and an important part. It cannot be made use of to control the express provisions of the Act; yet in cases of doubt it is a proper matter to be considered in order to assist the interpretation of an Act and in giving the doubtful

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(18) 1930 S. 265.

(19) *Manager, Indian Motor Taxi Cab Co.* v. *Corporation of Calcutta,* 25 C.W.N. 21=61 I.C. 641.

(20) *Chung Chuck* v. *Rex.,* 123 I.C. 731=1930 P.C. 291 (P.C.).

(21) *Per* Pollock, C.B., in *Salkeld* v. *Johnson,* (1848) 2 Ex. 282.

language of an Act a meaning consistent with the clear title of the Act.[22]

It is legitimate to use the full title of an Act to throw light on its progress and scope but not to the short title which is chosen for convenience, its object being identification and not description.[22-a]

The view adopted by British Indian Courts regarding the title of an Act and the headings of its chapters falls into line with the view adopted in England.

3. **Headings.**—In Allahabad it has been held by a Full Bench that the headings in the body of an Act are of some help in clearing obscurities when there is an ambiguity but they cannot control the provisions of the sections when the latter are unequivocal and clear. They are like the preamble and supply a key to the mind of the Legislature without controlling the substantive sections of the enactment.[23] The referring Judges in this case were of a contrary opinion and held headings were no part of the enactment and were no better than marginal notes to sections or rules being never put to the vote of the Legislature, and that they were generally faulty and prepared without much consideration. In an earlier case it was held to be settled that the headings prefixed in a Bill have the force of the words used in a preamble and act as a 'key to open the minds of the makers of the Act and they are in this respect

(22) Tagore Law Lectures, Interpretation of Deeds, Wills and Statutes in British India, p. 203 by K. S. Bonnerje. *See also Fielding* v. *Morley Corporation*, (1899) 1 Ch. 3; *Fenton* v. *Thorley*, (1903) A.C. 447; *A. G.* v. *Margate Pier Co.*, (1900) 69 L.J. 331.

(22-a) *Debendra Narayan Roy* v. *Jogendra Narayan Deb*, 1936 C. 593.

(23) *Durga Thathera* v. *Narain Thathera and another*, 54 A. 220= 1931 All. 597 (F.B.).

unlike marginal notes which have no force for the purpose of interpretation.'[24] In this case there was an ambiguity owing to divergence of judicial opinion as regards the summary procedure relating to claim petitions applying to mortgages and in the final decision of the matter effect was given to the heading fixed to R.58 of Order 21, C.P.C., and the heading suffixed to R. 63 of the same order and it was held that the matter adjudicated upon under the intermediate Rule 61 is a matter involving the investigation of claims and objections. In *Baldeo Kurmi* v. *Kasi Chamar and another*[25] where an argument was attempted to be built up on the heading to S. 198 of the Agra Tenancy Act 'Questions of proprietary title in Revenue Court' it was pointed out that the words in the heading were no doubt meant to express the intention of the Legislature though it was open to question whether the words themselves could be said to have any operative effect. It was held that the words only meant 'Let us consider the jurisdiction of the Revenue Court in certain cases and how far it is to proceed in the direction of dealing with proprietary title'. In *Chunilal and others* v. *Sheo Charan Lalman and others*[1] where the language was clear and where it appeared that Chapter III of the Court-Fees Act had been invariably applied to appeals filed in the High Courts the heading of Chapter III 'Fees in other Courts and in public offices' was ignored as the sections alone were the substantial parts of the legislation and as the adoption of the heading as a part of the enactment would have led to an absurdity.

(24) *Debi Das* v. *Maharaja Rup Chand*, 1927 All. 593.
(25) 1926 All. 312.
(1) 1925 All. 787.

4. **Madras view.**—The Madras High Court has likewise held in *Narayanaswami Naidu* v. *Rangaswami Naidu*[2] that headings and marginal notes cannot be held to govern the clear text of a section but can be taken only as an indication of what the Legislature meant and that accordingly where no money is payable under a decree or realizable in execution of a decree Order 21, Rule 2 does not apply.

5. **Preamble.**—The preamble is, as has already been pointed out, a good key to the correct understanding of a statute and it may be lawfully consulted to solve any ambiguity, to fix which of two or more meanings the words may bear and to understand generally the object and intention of the Legislature which it generally sets out.[3] It fixes normally the scope of the legislation and the effect it desires to produce. It cannot however, either restrict or extend the true scope of an enactment or its real object when they are plain and not open to doubt. There may be cases where the enacting part of a statute is not co-extensive with the object enunciated in the preamble; in such cases the preamble cannot cut down what the Legislature deliberately chose to enact in the body of the statute. It is not open to Courts to question the right of the Legislature to go beyond what is stated in the preamble.[4] It oftentimes recites some of the inconveniences to remedy which the legislation is undertaken but does not on that account exclude others that may exist. It gives the motive for

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(2) 1926 M. 749=49 M. 716=50 M.L.J. 547.

(3) *Krishnan Chettiar* v. *Manickammal*, 1934 M. 138=57 M. 718 =66 M.L.J. 70.

(4) *Thayarammal* v. *Junus Chettiar*, 44 L.W. 554=1936 M. 844 at 848.

the legislation and the evil to be avoided but does not confine the remedies to the rectification of that evil alone as it may be possible and even desirable to extend the remedies far beyond the immediate necessities of the case. A Court may look to the object and policy of the Act as recited in the preamble when a doubt arises in its mind as to whether the narrower or the more liberal interpretation ought to be placed on the language which is capable of bearing both the meanings.[5] It should be understood however, that an ambiguity cannot be created or imagined in order to bring in the aid of the preamble as that would be frustrating the enactment and defeating the general intention of the Legislature.[6]

6. Privy Council on importance of preamble.—In *the Secretary of State* v. *Maharaja of Bobbili*[7] a case arising under the Madras Irrigation Cess Act (VII of 1865 amended by Act V of 1900), their Lordships of the Privy Council in construing the Act referred to the preamble as 'not without importance' but finding that the preamble did not appear to be directed against the lands as those of the respondent, the Zamindar of Bobbili, turned their attention to the main sections of the Act observing at the same time that the operative provisions of the Act were somewhat in excess of the apparent ambit of the preamble and that in such a case it is the section that governed the interpretation of the matter in dispute and not the preamble.

(5) *Badat Rahim* v. *Badshah Mea*, 1934 C. 741=38 C.W.N. 1056, quoting Maxwell on the Interpretation of Statutes, 7th Edn. pp. 39-40.

(6) *Powell* v. *Kempton Park Race Course Co.*, (1899) A.C. 143 quoted with approval in *Nepra* v. *Sajer Pramanik and another*, 1927 C. 763=55 C. 67.

(7) 46 I.A. 302=43 M. 529=37 M.L.J. 724 (P.C.).

7. **Madras view.**—The Madras High Court has laid down in one case that the terms of a preamble may be resorted to in two classes of cases (1) where the words of a statute are susceptible of different constructions, (2) where very general language is used which is clear was intended to have some limitation placed on it. The preamble may be used to indicate the extent to which such language has to be curtailed or the class of cases to which it may reasonably be limited to apply.[8] In the above case it was held that the language of the statute was very clear and its full effect could not be narrowed down or limited to those tenants who could establish that they constructed their buildings on others' lands 'in the hope that they would not be evicted so long as they paid a fair rent for the land as recited in the preamble (to the Madras City Tenants' Protection Act 1922, S. 2). Again in the Madras Land Encroachment Act (III of 1905), the preamble refers only to unauthorised occupation of land but the enactment itself refers to and defines all kinds of Government property including land as a necessary requisite for the levy of penal assessment.

8. **Calcutta view.**—The Calcutta High Court has likewise held that the preamble of an Act does not control the enactment which follows it but may be a most useful guide when a question of doubt arises on the construction of a particular provision and considerations relating to the scope of the Act are involved,[9] and that accordingly great caution ought to be exercised in

(8) *C. Kannammal and others* v. *Kanakasabai Mudaliar and another*, 1931 M. 629=54 M. 845=61 M.L.J. 535.

(9) *Sital Chandra Chaudhury and others* v. *Mrs. Allen, J., Dalanney and others*, 20 C.W.N. 1158=34 I.C. 450.

applying general provisions of the Transfer of Property Act to matters relating to Easements.

9. **Oudh.**—In a Full Bench case of the Oudh Judicial Commissioner's Court the object of the Religious Endowments Act (1863) referred to in the preamble was relied on to show that the object of the legislation was to enable the Government to divest itself of the management of religious endowments and that S. 14 of the Act was inapplicable to temples for the maintenance of which no endowment in land has been made. Reference was made to *Brett* v. *Brett*[10] and it was pointed out that the key to the opening of every law is the reason and spirit of the law, the *animus imponentis,* the intention of the law-maker taken as a whole and the meaning of any phrase should not be viewed detached from the context but in relation to the whole statute including the title, and the preamble as the purview of the enacting part of the Act. It was stated that the reason and spirit of a statute were to be looked for in the preamble which 'rehearses' the evils to be remedied the doubts purported to be removed and affords the best and most satisfactory evidence of the object and intention of the Legislature in passing the statute.

10. **Lahore.**—In the Lahore High Court[11] it was pointed out that when the enacting part is not exactly co-extensive with the preamble and where the language of the statute is expressed in clear and unequivocal terms the latter will prevail over the preamble which can be referred to only to resolve any ambiguity in the

(10) 3 Add. 213=132 E.R. 457.

(11) *Kedar Nath and another* v. *Pearey Lal Gupta and another* 1932 Oudh 152=7 Luck. 648=137 I. C. 42 (F.B.).

phraseology of the Act. It was held that S. 6 of the Punjab Custom (Power to Contest) Act, 1920, was quite clear and could not be controlled by the preamble which referred only to descendants and collaterals.[12]

11. **Interpretation clause.**—An interpretation clause enacts that certain words found in the Act are to be understood in a specified sense and to include things which but for such a clause they would not normally include. It should be used only for the purpose of interpreting words which are ambiguous or equivocal but not to disturb the meaning of plain words. It only applies to the Act where it finds a place but cannot apply to statutes prior or subsequent.[13] When in an interpretation clause a word is said to include a particular thing, it means that it retains its ordinary meaning whatever else it may mean.[14] To define a word by the use of the very word to be defined is no definition at all and offends at all canons of interpretation.[15] Their Lordships of the Privy Council characterised it as a novel idea that an interpretation clause which is expressed in general terms can be divided up by a sort of theory of *applicando singula singulis* so as not to apply to sections whose context suggests no difficulty in its application and thus to make it applicable only to some sections and not to others.[16] Where a word or

(12) *Sahib Sing and others* v. *Data Ram and others*, 1931 Lah. 706 =14 Lah. 203=134 I.C. 788.

(13) Beal's Cardinal Rules of Interpretation, 3rd Edn., 1924.

(14) *Biswanath Sao and others* v. *Official Receiver and others*, 16 P. 60=18 P.L.T. 1=1937 Pat. 185 (F.B.).

(15) *Madura Sree Meenakshi Devasthanam* v. *Madura Municipal Council*, 1928 M. 569=51 M. 301=54 M.L.J. 625.

(16) *Indian Irrigation Trust Board of Natal* v. *Govindaswamy*, 1920 P.C. 114.

phrase is defined in an Act to have a particular meani that meaning alone should be given to it notwithstar ing it may bear a different meaning in ordinary leg parlance.[17]

12. **Rules.**—The rules framed under a statute gen rally prescribe the period during which objections the same could be raised and become law after the lap of that period where there are no objections or the san are overruled. They should be construed as far a possible in a manner consistent with the main prov sions of the Act and where reconciliation is impossib the sections would hold sway and the rules held subje to the sections under which they are framed. The rul have to be construed with reference to the sections an not *vice versa* and so also the forms appended to statute.[18] If the rules or bye-laws framed under a sta tute are in excess of the provisions of a statute or cor trary to or inconsistent with them they have to give wa and should be regarded as *ultra vires*.[19] It is impro per for a forced or unnatural construction to be place on a section to bring it in conformity with a rule fram ed thereunder.[20] Where a power to make regulation is given under a statute no regulations made under th statute can abridge a right conferred by the statute it self but if the rules framed are within the power confer red they would be valid even if they purport to abridg

(17) *Dial Sing* v. *Gurudwara Sri Akal Takht*, 1928 Lah. 325=9 Lah 649.

(18) *Somasundaram Chettiar* v. *Arunachallum Chettiar*, 63 M.L.J 28=1932 M. 523=55 M. 982. Also *Kandaswami Pillai* v. *Emperor*, 42 M 69=35 M.L.J. 736.

(19) *Barisal Co-operative Central Bank, Ltd.* v. *Benoy Bhushan*, 3 C.W.N. 459=151 I.C. 165=1934 C. 537.

(20) *Hemandas* v. *Bhai Nihchaldas*, 151 I.C. 89=1934 Sind 110.

the right granted by the statute.[21] The Calcutta High Court has laid down the method of construction applicable to an Act divided into sections and rules such as the Civil Procedure Code; the sections lay down the general principles and the rules provide the means by which they can be applied and to that extent the rules restrict the provisions contained in the sections.[22] Justice Woodroffee affirms the same position by stating that the body of the Code creates jurisdiction and the rules indicate the method in which it is to be exercised and that the Code should be read in conjunction with the rules.

13. Marginal Notes.—The marginal notes cannot be referred to for construing sections of the statute.[23] A contrary opinion prevailed for some time owing to a mistake but it has been exploded and all the High Courts till recently had held that there is no reason to give the marginal notes in an Indian Statute any greater authority than the marginal notes in an Act of Parliament following the Privy Council decision on the matter.[24] Where the language is not clear or the meaning plain it was held in some cases the marginal notes may be availed of and they have often been availed of by eminent authorities from ancient times as extraneous aids to the construction of a statute but

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(21) *Madurai Pillai* v. *T. Muthu Chetty*, 38 M. 825=26 M.L.J. 227 (F.B.).

(22) *Nabin Chandra Tripathi* v. *Prankrishna Day and others*, 41 C. 108=20 I.C. 39=18 C.L.J. 613.

(23) *Dharwar Urban Bank, Ltd., and another* v. *Krishnarao Anantharao Kour*, I.L.R. 1937 B. 293=39 Bom.L.R. 203=1937 Bom. 198, following 26 All. 393 (P.C.).

(24) *Thakurain Balraj Kunwar* v. *Rao Jagatpal Sing*, (1904) 31 I. A. 132=26 A. 393 (P.C.), *see also* 1934 A. 681.

by virtue of the Privy Council decision[25] which is t highest and final authority on legal matters in Indi Courts the correct view now prevailing may be stat to be that they cannot be looked at all. In re *A. E. Smit* the marginal note to S. 288 of the Madras City Municip Act (IV of 1919) was relied upon as making clear wh the section itself did not and the learned Judge felt was legitimate to look at the marginal note to see wh the drift of the section itself was, *viz.*, that the produ tion of noise or vibration causing a nuisance wa the subject-matter dealt with. But in another decision the same High Court[2] it was pointed out that in the ca of Indian enactments the marginal notes should not b held to control the clear meaning of a section or eve to show what the section means when the section is nc clear. The reason was stated to be that whatever ma be the view with regard to Acts of Parliament, the mar ginal notes to Indian enactments were never the subjec of discussion and they should not be held to form par of the statute and reliance was placed on *Attorney General* v. *Great Eastern Railway Co.*,[3] where it wa stated that according to English Parliamentary Practic and Procedure no amendments are set down or discuss ed upon the marginal notes to a clause and the Hous of Commons has never anything to do with the margina notes. In *G. I. P. Ry. Co.* v. *Challaram Grinchand*[4] the use of the word 'special value' in the marginal note to S. 75 of Act IX of 1890 and in Cl. (*s*) of the 2nd

(25) *Ibid.*

(1) 1924 M. 389=45 M.L.J. 731=81 I.C. 72.

(2) *Balaji Sing* v. *Chalka Ganganna and another*, 1927 M. 85=51 M.L.J. 641=99 I.C. 143.

(3) (1879) 11 Ch. 449.

(4) 41 M.L.J. 603=65 I.C. 99=14 L.W. 614.

schedule, it was held, must not be taken to imply that only articles falling within the description of the schedule which are of exceptional value must be declared. The Privy Council decision above referred to, *i.e., Balraj Kunwar and others* v. *Jagat Pal Sing*,[5] was actually referred to in *Aiyalam Kesava Chetti* v. *Secretary of State for India in Council represented by the Collector of North Arcot*,[6] and it was held on the strength of that decision that it is well settled that marginal notes to sections of an Act of the Indian Legislature cannot be referred to for the purpose of construing the Act. To the same effect is the judgment of the Bombay High Court in *Dharwar Urban Bank* v. *Krishnarao*.[7]

14. Dissenting Note in Allahabad.—A dissenting note against the prevailing view was struck for the first time by the Allahabad High Court in *Ram Saran Das* v. *Bhagwat Prasad and another*[8] where Justice King pointed out that the criterion for determining whether the marginal notes of an Indian statute could be referred to in interpreting the statute was to find out whether the notes have been inserted under the authority of the Legislature. His Lordship pointed out that till comparatively recent times the Parliamentary Roll had no marginal notes or punctuation marks and that even the sections were not separated in the earliest stages of the history of Parliament and it was only after 1849 that marginal notes appeared on the Rolls of Parliament and the conflict of judicial opinion as regards the availability or otherwise of marginal

(5) 26 A. 393 (P.C.).
(6) 36 M.L.J. 222=42 M. 451.
(7) I.L.R. 1937 B. 293=39 Bom.L.R. 203=1937 Bom. 198.
(8) 51 A. 411=1929 All. 53 (F.B.).

notes in English law arose on the question whether t
may be considered to be inserted with the assent of
Legislature or no. So far as the United Provinces v
concerned the learned Judge knew from perso
knowledge and experience as the Legal Remembranc
Deputy Secretary and member of the U.P. Legislatu
for several years including the period when the Ag
Pre-emption Act was on the anvil of the Legislati
Council that every Bill was drafted with marginal not
that the practice of inserting marginal notes is express
required by instructions issued by Government of Ind
and has been in vogue in the United Provinces f
several years that in the committee stages marg
nal notes were invariably considered and such amen
ments to the marginal notes as were deemed fit wer
made and that even in the consideration of the Bill b
the open House notices of amendment to marginal note
were given and considered by the House and tha
accordingly the rule of law laid down in 26 All. 293 b
their Lordships of the Privy Council was open t
exceptions and that the marginal notes to the Agr
Pre-emption Act having been inserted under th
authority of the Legislature could certainly be looke
at in interpreting the sections of that Act. In th
Collector of Meerut v. *Chaudhury Risalsing*,[9] however
the Allahabad High Court referred to the fact that the
marginal note attached to S. 20 of the Courts of Wards
Act (IV of 1912) mentions only a Civil Court when the
section itself enables the claimant to pursue his remedy
in a Court of competent jurisdiction and that the mar-
ginal note was unduly restricted and was wrong and
could not be followed.

(9) 1934 A. 681=57 A. 212.

15. Calcutta view.—In a recent Calcutta case,[10] Lort Williams, J., expressed full agreement with the opinion of Justice King in the Allahabad Full Bench case[11] and remarked that the judicial opinion expressed by Lord Macnaghten in the Privy Council case could not be held to be a final or authoritative pronouncement on the matter for all times nor with reference to all Indian statutes and expressed the hope that some day the matter may be more fully considered by the Privy Council itself or the Legislature might solve the uncertainty by appropriate sections being added to the General Clauses Act.

16. Illustrations.—The illustrations to a section are useful in so far as they help to furnish some indication of the presumable intention of the Legislature and do not bind the Courts to place a meaning on the section which is inconsistent with its language.[12] They are of great value in the construction of the text and a very special case has to be made out to reject an illustration on the ground that it is opposed or repugnant to the main section.[13] Where the meaning of a section is doubtful reference to the illustration to clear the meaning is justifiable.[14] They should not be rejected on the ground that they do not agree with ideas derived

(10) *Abdul Hakim* v. *Fozu Mia and another*, 39 C.W.N. 57=1935 C. 287.

(11) *Ram Saran Das* v. *Bhagwat Prasad*, 51 A. 411=1929 A. 53 (F.B.).

(12) *Satish Chandra Chakravarti* v. *Ram Doyal De*, 48 C. 388=24 C.W.N. 982 (F.B.).

(13) *Mahomed Syedol Ariffin* v. *Yeoh Ool Gark*, 43 I.A. 256=21 C.W.N. 257=1917 M.W.N. 162 (P.C.). Also *Chaito Kalwar* v. *Emperor*, 1928 C. 240.

(14) *Mt. Sajidunnissa Bibi* v. *Sayed Hidayat Hussain and others*, 1924 All. 748=80 I.C. 896.

from a different system of jurisprudence.[15] They
no part of the section and cannot control its pl
meaning and can and ought to be used only as bei
helpful in the working and application of a statut
at the date of the publication of the Code or as alter
or amended subsequently. They illustrate and in
way restrain the effect of the law they illustra
Exempla illustrant non restringunt legem.[17]

17. Schedules are part of the Act and should
read along with it for purposes of construction[18] b
where the enactment is clear they do not control
qualify the body of the enactment. In the case
conflict between the sections and the schedules th
former prevail.[19]

18. The Statement of Objects and Reasons to
statute cannot be referred to in construing a statute.[2
They form no part of the statute[21] and must be exclud
ed from consideration.[22]

**19. The Proceedings of Legislative Council or th
Reports of Select Committee** are likewise not to be re
ferred in the interpretation of statutes. No statemen
made on the introduction of a measure or its discussion
can be looked at as any guidance to the meaning of

(15) *Kandappa Mudaliar* v. *Muthusami Iyer*, 1927 M. 99=50 M. 94 =51 M.L.J. 765=24 M.L.W. 782=1926 M.W.N. 990.

(16) *Hemchandra Naskar* v. *Narendranath Basu*, 1934 C. 402= 38 C.W.N. 101=61 C. 148.

(17) Co. Litt. 240.

(18) *Dhonessur* v. *Roy Gooder Sahoy*, 2 Cal. 336.

(19) *Rahim Manjhi* v. *Sheikh Ekbar*, 22 I.C. 690.

(20) *Zamindar of Ettiyapuram* v. *Chidambaram Chetti*, 43 M. 675 =39 M.L.J. 203=28 M.L.T. 75=1920 M.W.N. 460=12 M.L.W. 217 (F.B.).

(21) *Ratansi Hirji* v. *Emperor*, 1929 Bom. 274.

(22) *Debendra Narain Roy* v. *Jogendra Narayan Deb*, 1936 C. 593 at 619 (Under Assam Bijni Succession Act II of 1931). *See also* In the matter of *Lala Hari Kishan Lal*, 1937 Lah. 497. Also 1939 Sind 134.

words.[23] The Patna High Court accordingly refused to refer to the speech of Sir Stuart Bayley in the Imperial Legislative Council during the passage of the Bengal Tenancy Act.[24] In *R. S. Ruikar* v. *Emperor*[25] the Court refused to go into or rely upon the assurance alleged to have been given on the floor of the Central Legislature that the Criminal Law Amendment Act would not be applied to industrial disputes nor to the fact that it was enacted to combat the Civil Disobedience Movement. In *In re C.P. Motor Spirit Act,* Gwyer, C.J., of the Federal Court of India held that the proposals for Indian Constitutional Reform known as the White Paper and the Report of the Joint Select Committee could be referred to as historical facts having a bearing on the constitution though Sulaiman, J., doubted if it was legitimate to refer to them. It is submitted that Sulaiman, J.'s view appears to be more correct.[1]

20. Punctuation marks: are likewise no part of a statute and they have to be ignored in reading or interpreting it.[2] They cannot control the meaning of sections.[3] The doubt expressed by Sundara Aiyar, J., in *Secretary of State for India in Council* v. *Kalekhan*[4] whether the view adopted under English law in regard to punctuation marks is applicable to India is no

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(23) *Krishna Iyengar* v. *Nallaperumal Pillai*, 43 M. 550=38 M.L.J. 444.

(24) *Ram Ranbijay Prasad Sing* v. *Ram Girhi Rai and others*, 1935 Pat. 346.

(25) 1935 Nag. 149.

(1) *In re* C.P. Motor Spirit Act, 1939 Fed. C. 1=1939 M.L.J. (Supp.) 1.

(2) *Lewis Pugh Evans Pugh* v. *Asutosh Sen and others*, 1929 P.C. 69=56 M.L.J. 517 (P.C.). Also *Niaz Ahmad* v. *Parsottam Chandra*. 1931 A. 154.

(3) *L. Mansa* v. *Mt. Ancha and others*, 1933 All. 567.

(4) 37 M. 113.

longer tenable in view of the Privy Council decis and several other Indian cases following the same.

21. Saving clauses where they find a place in statute never afford good ground for construing A The reason for their insertion is stated to be anxiety on the part of every one imagining the infrin ment of his rights to attempt to get his interests sa guarded by the insertion of such a clause.[5]

22. A proviso to a section should be interpret with reference to the preceding parts of the clause which it is appended and as subordinate to the ma clause. Where a proviso is directly repugnant to t purview of it the proviso shall stand and shall be dee ed to be a repeal of the purview as it speaks the la intention of the makers. If a substantive enactme is repealed that which comes by way of a proviso impliedly repealed.[6] A proviso is generally used indicate that the general provision to which it is adde is not applicable to instances pointed in the provis which are in effect cut out of the general provision b that proviso. Provisos are sometimes added to remove misapprehension that might be caused as to the affec ing of rights referred to in the proviso by the genera provisions enacted. If a provision is ambiguous th proviso may sometimes be used to solve the doubt s created. It is illegitimate however to interpret a pro viso so as to extend its application to the provision t which it relates.[7]

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(5) *Fitzgerald* v. *Champneys*, (1861) 2 J. and H. 31 at p. 59; 3 L.J. 777 at 783 *per* Sir Page Wood, V.C.

(6) Beal, Cardinal Rules of Legal Interpretation, 1924. 3rd Ed., 30 to 305.

(7) 16 Mys. L. J. 287.

BOOK II

SPECIAL RULES AND PRESUMPTIONS IN INTERPRETATION.

CHAPTER I.

The Rule as to Retrospective Effect.

1. Presumption is that Laws are prospective only.—The rule that all statutes shall be deemed to be prospective only and not retrospective in their effect and operation has been the law of all nations from the earliest times and had been well established in England even by the time of Lord Coke. *Omnis nova constitutio futuris formam imponere debet non praeteritis*:[1] *prima facie* a new law affects future transactions, not the past. That a new law ought to be construed so as to interfere as little as possible with vested rights except in special cases has been a well-known and a trite maxim to the interpreter of laws. The rule is one based on justice and expediency and on the ground that all deprivation of existing rights is *prima facie* wrong. The law always views with disfavour *expost facto* legislation except where it is absolutely necessary in the interests of the State or the safety and well being of its subjects or the exigencies of Society. In each case it is a matter for the Legislature to decide and one lying entirely in its discretion.[2]

2. English law.—The English Rule as to retrospective effect laid down in one of the leading English

(1) 2 Inst. 392.

(2) *Phillips* v. *Eyre*, (1870) L.R. 6 Q.B. 1 at 27=40 L.J.Q.B. 28 at 37 *per* Willes, J.

cases, In re *Athlumney*: Ex parte *Wilson*[3] states nothing is more firmly established than that retros tive operation should not be given to a statute so a impair existing rights or obligations unless that ei cannot be avoided without doing violence to the lar age of the statute, the only exception being in a ma of procedure. It has been further laid down in same case that if the enactment is couched in langu that allows of either interpretation it should be c strued as prospective only. A second or subordin rule of construction is that even in cases where statute is retrospective to a certain extent it should so construed to the most absolutely minimum ext possible and the retrospectivity should not be carr beyond the point at which the language of the statu ceases to be plain.[4] The presumption in the abser of anything to the contrary expressed in the langua or the context or the object of a statute is that a statu is prospective only.[5] In one of the cases Erle, C. stated the reason for the rule as being that it would shocking to one's sense of justice that what is legal the time of doing it should by a subsequent enactme be rendered illegal.[6] In another case Lord Esher, M R., pointed out the converse effect of retrospectivit viz., that it was improper that persons who had bee doing that which the legislature considered to be wron should escape the consequences of their acts by repea

(3) (1898) 2 Q.B. 547 at pp. 551, 552; 67 L.J.Q.B. 935 at 937.

(4) *Reid* v. *Reid*, (1886) 31 Ch. D. 402 at 408, 409=55 L.J.Ch 294 at 298.

(5) *Kew* v. *Marquis of Ailsa*, (1854) 1 Macq. H. L. 736 at 737 an *Vansittart* v. *Taylor*, (1855) 4 E. and B. 910 at 914.

(6) *Midland Rail Co.* v. *Pye*, (1861) 10 C.B.N.S. 179 at 191.

of the Acts under which they committed the wrong.[7] It is unjust that transactions entered into by parties should be avoided by no mistake of their own without their being given an opportunity to comply with the requirements of the Legislature.[8] It is likewise not permissible for creating new criminal offences by giving a retro-active operation to Acts of Parliament unless the intention of the Legislature is expressed in a language beyond doubt.[9]

3. Indian law the same: Views of the Privy Council based on a leading English case.—Indian decisions have laid down the same rule in unmistakable terms. The Privy Council has laid down in one of the leading cases on the subject that provisions in a statute which touch a right in existence at the passing of the same are not to be applied retrospectively in the absence of express enactment or necessary intendment of the same.[10] An exception is made in cases of provision dealing with matters of procedure which may properly be retrospective in effect but even here an exception is made in cases where such construction would be textually inadmissible.[11] The Privy Council pointed out in the above case that provisions which if applied retrospectively would deprive orders which were final at the date a statute came into force of their existing finality were provisions which

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(7) Ex parte *Todd*, (1887) 19 Q.B.D. 186 at 195=56 L.J.Q.B. 431 at 432.

(8) *Ibid.*

(9) *Rex.* v. *Griffiths*, (1891) 2 Q.B. 145 at 148=60 L.J.M.C.93.

(10) *Delhi Cloth and General Mills Co.* v. *Income-tax Commissioner, Delhi and another*, 1927 P.C. 242=53 M.L.J. 819 (P.C.).

(11) *Ibid.*

touch existing rights. Their Lordships based t judgment on the leading case of *Colonial Sugar R ing Co.* v. *Irving*,[12] which has since been uniformly c and quoted with approval in all the Indian Courts. that case the creation of the High Court of Austr by the Australian Commonwealth Judiciary Act 1903 took away the right of appeal from the Supr Court of Queensland to His Majesty in Council. question that fell to be considered was whether suc right of appeal in a pending action which the party l before the Act was passed could be deemed to have b taken away by the new Judicature Act, in other wor whether a litigant could be deprived of a vested ri of appeal by a new enactment which withdrew suc right and whether the statute was to be construed as to operate retrospectively. Lord Macnaghten wh upholding the right of appeal to the Privy Council ev after the passing of the Australian Commonweal Judiciary Act of 1903 laid down the law in a few we stated propositions:—

(*i*) If the matter related to procedure only t statute could be held to be retrospective in effect.

(*ii*) If it was however, a matter which was mo than one relating to procedure, *i.e.*, if it touched a rig in existence at the passing of the Act, it could not l held to be retrospective in effect according to a lor line of decisions extending from Coke.

(*iii*) The language of the Judicature Act neith by express enactment nor by necessary intendmer allowed of the construction that it was retrospective

(12) 1905 A.C. 369.

(*iv*) That a right of appeal to His Majesty in Council vested in the appellant at the date of the passing of the Act; it was not a mere matter of procedure but stood on a much higher footing and was very different. It was pointed out that to deprive a suitor in a pending action of the right of appeal to a superior Court which belonged to him as of right was a very much different thing from one regulating procedure.

4. **Illustrations.**—Applying the above principle the Privy Council held that an Act for avoiding Wagers passed on 10—10—1848 could not affect contracts commenced before the Act was passed[13] as there were no words in the language of the statute to indicate such an intention. In *Toronto Ry.* v. *Toronto Corporation*,[14] the Railway Board of Ontario passed an order requiring a railway company to provide a number of additional cars within a certain date but the same was not complied with within the stipulated period and subsequently an Act was passed enabling the Board to impose a penalty for every day of default in complying with that order. On the strength of the Act the Board ordered the Toronto Railway Company to pay a penalty of $ 1,000 per day from 27—3—1918 the date when the Act came into force to the date of the order (19—4—1918). The validity of the order having been challenged before their Lordships of the Privy Council they upset it remarking that to give such an effect to the statute would be to make the Act *expost facto* legislation which was not the intention of the Legislature and the order passed was not authorised without giving

(13) *Doolub Doss and others* v. *Ram Lal Thackersay Das and others*, 5 M.I.A. 109.

(14) 1920 P.C. 233.

the railway company a warning that after a speci period a penalty would be imposed and thus giv them an opportunity to comply with that order.

5. The rule against retrospective effect applies only to cases where a statute is repealed but also cases where it is amended.[15]

6. **Madras cases.**—In the Provinces the same r has been upheld in several cases. Where Act XX 1929 which introduced S. 53-A of the Transfer of P perty Act relating to the doctrine of part performan enacted that it shall come into force from 1—4—19 and there was nothing in the language of S. 53-A itself indicate a contrary intention it could not be inferentia ly held to be retrospective from the omission of S. 53- in S. 63 of the Act which while mentioning other se tions of the Act which were not to affect the terms ar incidents of transfer of property made prior 1—4—1930 omitted to include S. 53-A in the list.[16] Th express saving of pending rights of appeal in S. 15 C.P.C., did not imply the repeal of other vested rights.[1] In *Rao Bahadur A. T. Pannirselvam* v. *A. Veeria Vandayar and another*,[18] the contention that Act XI o 1930 amending the Madras Local Boards Act, 192(ousted the jurisdiction of the sub-Judge who had enter tained an election petition before the Act had come int force was negatived on the general ground that it was fundamental rule of interpretation that a statute othe

(15) *Union of South Africa* v. *Simmer and Jack*, 1918 P.C. 161.

(16) *Kanji and Moolji Brothers* v. *Shanmuga Pillai*, 63 M.L.J. 587 =1932 M. 734=56 M. 169.

(17) *N. Viswanatha Sastri* v. *Sithalakshmi Ammal and others*, 1921 M. 126=61 I.C. 979=13 L.W. 37.

(18) 60 M.L. J. 191=1931 M. 83=54 M. 627.

than one dealing with procedure should not be construed so as to have retrospective effect unless the same appears in terms or by clear and necessary implication. The decision in this case was also based on the Madras General Clauses Act under which unless a contrary intention appears an Act of the Madras Legislature though it may repeal a previous Act does not affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment nor affects any investigation, legal proceeding or remedy in regard to the said right, privilege, etc., but reserves and continues the same as if the repealing Act had not been passed. Again S. 8 of the Madras Estates Land Act was held not to impose retrospectively a prohibition of the conversion of ryoti land into private land as it was not found in the definition of the section dealing with evidence as to what was private land.[19] The words 'contract to the contrary' in S. 13, Cl. (3) of the Madras Estates Land Act refer only to those entered into after the passing of the Act and the section has no retrospective operation to cases where rent was payable under Rent Recovery Act or any other law in force,[20] prior to the passing of the Act. In a suit instituted after the C. P. C. of 1908 a decision in a suit of 1902 which would not have operated as a bar under S. 13 of the Code of 1882 was pleaded as a bar on the strength of the alteration of the law as made in S. 11 of the Code of 1908 but the contention was overruled on the ground

(19) *Zemindar of Chellapalli* v. *Somaya*, 39 M. 341=27 M.L.J. 718=27 I.C. 77.

(20) *Venkata Perumal* v. *Ramudu*, 28 M.L.J. 81=39 M. 84=27 I.C. 688.

that explanation II to S. 11 had no retrospec operation.[21]

7. **Calcutta.**—Where a question arose in the (cutta High Court as to what procedure was open to auction purchaser (at a Court sale held under the Code of 1882) who discovered after the sale that judgment-debtor had no saleable interest in the p perty sold, whether it was only an application un Order 21, Rule 93 of the C. P. C., 1908, or either application or a suit which were both available un the old Code, it was held the auction purchaser had the date of the sale (which was held under the old Co a vested right to secure a refund of the purchase-mon by suit also and the same could in no way be deemed be extinguished by the Code of 1908.[22] It was point out in the above case that if the new Code were h applicable the remedy under the old Code might be b red by limitation and in such a case the enactment cou not be given a retrospective operation so as to impo an impossible condition on pain of forfeiture of a ve ed right. It was similarly held by the same High Cou that S. 317 of the Civil Procedure Code of 1882 a not the Code of 1908 governed a suit for declaration title against a purchaser at an execution sale and h assignees where the sale took place and was confirm before 1—1—1909 though the sale certificate was issu later.[23] Where S. 109 of the Bengal Tenancy Act w amended by Act IV of 1928, a suit barred under S. 1 of the Act before the amendment could not be revive

(21) *Raja of Kalahasti* v. *Swarnam Kamakshamma and others*, M.L.J. 535=28 M.L.J. 115=28 I.C. 378.

(22) *Makr Ali* v. *Sarfaddin and others*, 1923 C. 25=77 I.C. 261.

(23) *Pramathanatha Pal Choudhari* v. *Mohini Mohan Pal Chowdha* 47 C. 1108.

as the amendment was not retrospective in effect.[24] It was observed in *Ajit Sing* v. *Bhagabati Charan Mukherjee*[25] that if the application of the provisions of an Amending Act make it impossible to exercise a vested right of suit, the Act should be construed as not being applicable to such cases.

8. **Allahabad.**—Following the same line of reasoning the Allahabad High Court has held that the introduction of the Transfer of Property Act (1882) did not affect the right or liability of a mortgagee by conditional sale under Bengal Regulation XVII of 1906 or the relief in respect of such right or liability though it affected the procedure to be adopted in regard thereto.[1]

9. **Patna.**—The Patna High Court has held that Act XXX of 1923 (Bihar) affecting status and rights of property could not be construed to be retrospective. Consequently where a Hindu who contracted a marriage under the Special Marriage Act (III of 1872) had offspring after the Act was amended by Act XXX of 1923, it was held that they were governed by the law prevailing at the date of the marriage and not at the death of the father by which time the amendment had come into force. The result was also arrived at by reference to S. 24 of the new Act and it was pointed out that the consequences of holding the Act to be retrospective would be disastrous.[2] The same Court held that there was nothing in S. 139-A to the Amending Act VI of

(24) *Gosta Behari Pramanik* v. *Nawab Bahadur of Murshidabad*, 35 C.W.N. 1147=1932 C. 207.

(25) 1922 C. 491=70 I.C. 370.

(1) *Kharag Sing and others* v. *Kiddha*, 1926 A. 667=96 I.C. 93.

(2) *Punyabrata Das* v. *Monmohan Ray and others*, 1934 Pat. 427=153 I.C. 520.

1920 (Chota Nagpur Tenancy Act—Bengal Act VI
1908 amended by Act VI of 1920) to show that the
was intended to be retrospective in effect nor to dest
a right which had come into existence before the sect
had come into force. A suit for possession institut
after the amendment had come into play but where t
cause of action arose in 1916 before the amendme
had come into force was held to lie in a Civil Court
the plaintiff had acquired a vested right in regard
the same and a summary proceeding was not the on
remedy open to him. It was if at all an addition
remedy open to him.[3] The decision might at first sig
appear to be opposed to the general rule but th
amendment in this case did not as a matter of fact rela
merely to matters of procedure as pointed out by Justic
Jwala Prasad. The Bihar Tenancy Act (VIII c
1934), S. 26 (*c*) was held not to take away a right whic
had vested in a party under a decree passed by a Cour
of competent jurisdiction on the ground that a nev
law should be construed so as to interfere as little a
possible with vested rights in the absence of a clea
provision in the new enactment and as otherwis
a valid decree would automatically become invalid whic
consequence could not be supported on general princi-
ples of justice.[4]

10. Lahore.—The Lahore High Court has also
applied the general law as above stated and has held
that legislation should not be construed as having a
retrospective effect when it touches rights in existence

(3) *Chaudhry Gursuran Das and others* v. *Akhouri Parameshwari Charan and others*, 1927 P. 203=6 P. 296=104 I.C. 580.

(4) *Shiya Janaki Thakurani* v. *Kirtanand Sing Bahadur and others*, 1936 Pat. 173 followed in *Badri Narayan Sing and others* v. *Ganga Sing and others*, 1937 Pat. 605=18 P.L.T. 731.

at the time the statute is passed to a case arising under Income-tax Law. It held that the amendment to S. 66 of the Income-tax Act (1922) by the Amending Act of 1933 gives no right to the assessee to re-open an order of the Income-tax Officer under S. 33 on a reference to the High Court as the right was a vested one and not one relating to procedure.[5]

11. Rangoon.—The Rangoon High Court has reiterated the same view by holding that statutes should not be interpreted to have a retrospective operation unless they contain clear and express words to that effect or the object or the subject-matter or the context shows that such was the object.[6]

12. Bombay.—In Bombay it was held that Ss. 12, 13, 71-A of the Deccan Agriculturists' Act (VII of 1879) have no retrospective effect and that S. 12 has retrospective effect only so far as it regulates procedure and the part dealing with taking of accounts is not retrospective.[7]

13. Nagpur.—In the Central Provinces it was decided that S. 52 of the T. P. Act (amended by Act XX of 1929) had no retrospective operation as the language itself made it clear.[8] In another case where the instrument to be interpreted was executed in 1913 and came under judicial consideration in 1917 it was held that it had to be interpreted under the Tenancy Act of 1898 and not under the new C. P. Tenancy Act of 1920 which could not be even dreamt of in those

(5) *Ata-ur-Rahman* v. *Income-tax Commissioner, Lahore,* 1934 Lah. 1013.

(6) *Bank of Chettinad* v. *Ma Ba Lo,* 1936 R. 152 at 156.

(7) *Fatima Bibi* v. *Ganesh,* 31 B. 630 (F.B.).

(8) *Harlal* v. *Lala Prasad,* 1931 N. 138.

years.[9] The latter portion of sub-S. (1) of S. 49 the C. P. Tenancy Act (1920) has similarly no ret spective effect[10] nor was there anything in S. 60 of C. P. Tenancy Act of 1898 which made it applicable contracts entered into before the passing of the Ac

14. Substantive rights and Procedure—Line demarcation.—The line of demarcation between statu that deal with substantive or vested rights in rega to which they shall not be deemed to be retrospecti in the absence of language to that effect and those de ing with procedure in regard to which they wou ordinarily be presumed to be retrospective with a li exception in cases where the language excepts ev such statutes, may be easy in most cases but is n always so and the language, context and object of t statute may have to be considered in finally decidi one way or the other in regard to the effect of statut or the provisions therein whose prospective or retr spective character may be called in question. As poin ed out by Justice Pandrang Rao in *S. Girdharilal So and Co.* v. *B. Kapini Gowder and others*[11-a] the wor 'procedure' is a word of indefinite and uncertain impor and it is difficult to formulate where procedure end and substantive law begins. Procedure deals broadl speaking with the process of litigation or the law rela ing to actions, all the rest being substantive law. Th latter defines rights and remedies and procedure lay down the conditions of the application of the remed

(9) *Lakshmichand* v. *Baji Rao*, 1921 Nag. 170=65 I.C. 72.

(10) *Hindusing and another* v. *Mangal and another*, 1923 N. 227= 19 N.L.R. 110.

(11) *Mt. Lahiri* v. *Bala*, 1922 N. 227=18 N.L.R. 85.

(11-a) 1938 M. 688=(1938) 2 M.L.J. 44.

to the rights. Holland defines it as consisting of four parts: (1) the section of jurisdiction; (2) ascertainment of Court having such jurisdiction and capable of pronouncing a proper decision; (3) setting such a Court in motion to secure a decision; and (4) setting in motion the force which can effectuate the decision passed. While the distinction between the two classes of law can be drawn in theory in practice it becomes obliterated and the difference becomes one of form rather than one of substance. The learned Judge above referred to quotes from Holland three instances of such merger of procedural and substantive law, *viz.*, (*i*) Exclusive evidential facts which are practically constituent elements in the title of the right to be proved for example, a contract which can be proved only by a writing, (*ii*) conclusive evidential facts which tend to take the place of the fact proved by it, *e.g.*, conclusive presumptions, and (*iii*) Limitation of Actions which is 'the procedural equivalent of the prescription of rights'.

15. **Vested rights—Right of appeal.**—Dealing first with vested rights it has already been pointed out that a right of appeal is a matter very different from one relating to procedure and is a vested right which cannot be defeated by an amending Act abolishing the right altogether or transferring it to a new tribunal. What applies to the abolition of a right of appeal applies with equal force to a restriction of the right of appeal.[12] The institution of a suit is said to carry with it the implication that all appeals allowed therefrom are preserved to it till it reaches the final Court and the

(12) *A. Sikannesa Bibi* v. *Dwijendra Krishnan Dutta and others*, 34 C.W.N. 820, following *Hakim Lal* v. *Mooshahar Sahu*, 34 C. 999 at 1009.

only manner in which it can be cut down is by the ab tion of the appellate Court itself by an express necessarily implied declaration in the language of statute to indicate its clear intention in that behal It has been held in another case that when the proce ings have commenced in the original Court the right appeal therefrom cannot be taken away by a new P cedure Code come into force after such proceedings instituted.[14] The rights of parties are to be decid according to the law in force when the action comm ced unless a contrary intention appears from the A itself.[15] The right inheres in a party from t commencement of the action in the Court of the fi instance, and if the ultimate decision according to t law in force was appealable the right would in no w be affected by a subsequent change in the law abolishi the appeal or modifying its form.[15-a] To disturb existing right of appeal is not an alteration in procedu but is a substantive right.[16]

16. Final and conclusive judgment.—A second clas of vested rights is the right to treat a judgment a final and conclusive. It is in fact the converse of a righ to appeal and is as valuable and sacred a right as right to carry a matter in appeal and will likewise b not affected by any new legislation.[17]

(13) In re *Vasudeva Samiar*, 1929 M. 381=52 M. 361=56 M.L.J 369 (F.B.).

(14) *Saliamma and another* v. *Valli Hassanabba Beari*, 21 M.L.J. 764.

(15) *Kanakakanti Roy* v. *Kripanath Gauri and others*, 1931 C. 321 =58 C. 817=35 C.W.N. 125. See also *Lawrie* v. *Renad*, (1892) 3 Ch. 402.

(15-a) *Bhai Kupa Sing* v. *Rasaldar Ajaipal Sing and others*, 10 L. 165=1928 L. 627 (F.B.).

(16) *Nana Bin Aba* v. *Sheku Bin Andu*, 32 B. 337.

(17) *Subramania Iyer* v. *Namasivaya Asari*, 35 M.L.J. 77.

17. **Right to defeat a claim.**—A third class of such vested rights is the right to defeat another's claim which has been held by itself to be a substantive right and as one which cannot be defeated by any subsequent legislation.[18]

18. **Right to prevent enforcement of a right.**—A fourth class is a right conferred on one of the parties to a contract to prevent another from enforcing his rights otherwise than through the tribunal chosen by the parties.[19]

19. A few typical cases will illustrate the above classification.

20. **Typical cases.**—A second appeal lies against an appellate order under the S. 310-A of the repealed C.P.C. of 1882 where the same was presented when the repealed Code was in force though after the repeal, the Code does not provide for a second appeal.[19-a] The amendment of the Court-Fees Act which came into force after the institution of a suit would not deprive the plaintiff of a right of appeal to the High Court which he had at the time when he filed the suit.[20] Proviso to S. 174 (5) of the Bengal Tenancy Act does not affect retrospectively an appeal from an order under Order 21, Rule 90 where such an order is made prior to the coming into operation of the proviso (in 1929) long after the application was made (on 22—8—1927). It was held that parties had a vested right which ena-

(18) *Sheopujan Rai* v. *Bishnath Rai and others*, 1930 All. 706=52 A. 886.

(19) *Dorai Sami Padayachi* v. *Vydyalinga Padayachi*, 33 M.L.J. 46.

(19-a) *Kalinga Hebbara* v. *Narasimha Hebbara*, 21 M.L.J. 631= 11 M.W.N. 143; *Saliamma* v. *Valle Hussanabba Beari*, 21 M.L.J. 764= (1911) 2 M.W.N. 99.

(20) *Daivanayaga Reddiar* v. *Renukambal Ammal*, 1927 M. 977= 50 M. 857 (F.B.).

bled them to file an appeal without a deposit of decr money and the same could not be disturbed.[21] A instituted before the coming into force of the A Tenancy Act (XIII of 1926) but decided after it ca into operation is governed by the prior Act (II 1901) only.[22] Where a suit for arrears of rent v filed when the prior Tenancy Act was in force before it was decided the new Agra Tenancy Act (19 had come into operation and the decree of the first Co (Sub-Collector) was passed on 23—12—1926, *i.e.*, mo than three months after the New Act had come in force and where there was a right of appeal under t Old Act but not under the New Act (in matters of le than Rs. 200 in value as in this case) it was held t right of appeal continued and the same was governe by the law obtaining at the date when the suit was file and not that which prevailed at the date of its decisi or at the date of the filing of the appeal. An appe is a continuation of the original proceeding initiated b the plaint and in the absence of express language t that effect cannot be defeated by subsequent legisl tion.[23] Where the defendant had a right to defeat th plaintiff's claim for pre-emption which was acquire before the New Agra Pre-emption (Amended) Act I of 1929 came into force which it did during the pend ency of a second appeal, it was held that the New Ac did not take away the right possessed by the defendant.[2 'Para. 22 of IInd Schedule' to the New C.P.C. does no

(21) *Asikannessa Bibi and others* v. *Dwijendra Krishna Dutt and others*, 1931 C. 92.

(22) *Mt. Janak Dulari* v. *Bishambar Nath and others*, 1929 All. 745 =119 I.C. 251.

(23) *Ram Sing and another* v. *Shankar Dayal and another*, 1928 All. 437 (F.B.).

(24) *Sheo Pujan Rai* v. *Bishnath Rai and others*, 1930 All. 706= 52 A. 886.

deprive the defendant of his vested right (to object to the maintainability of a suit on the ground that the matter in dispute had been referred to arbitration and the arbitration was still operative) which accrued to him under the prior law and the plaintiff in such a case would be disabled from enforcing his rights in a Court of law notwithstanding the enactment of the New Code which took away that right.[25]

21. **Lahore Full Bench on retrospective effect: Classification of statutes.**—The law as to how statutes are to be construed with regard to their prospective or retrospective effect is nowhere better summed up than in the Full Bench decision of the Lahore High Court in *Bhai Kirpa Singh* v. *Rasalldar Ajaipal Singh and others*[1] where the law has been laid down in the form of clear cut propositions with due regard to the several classes of statutes that may come in for interpretation.

(*i*) Statutes are to be interpreted if possible so as to respect vested rights, *i.e.*, to be prospective only and not retrospective.[2]

(*ii*) Statutes which contain provisions both prospective as well as retrospective may be divided into three sub-divisions with regard to the sections contained therein:—

(*a*) Sections which apply only prospectively according to the clear statement contained in them.

(*b*) Sections which apply both prospectively as well as retrospectively by an equally clear statement in them.

(25) *Dorai Sami Padayachi* v. *Vydyalinga Padayachi*, 33 M.L.J. 46.

(1) 1928 Lah. 627 (F.B.).

(2) *Hough* v. *Windus*, (1884) 12 Q.B.D. 224 (237).

(*c*) Sections in regard to which there is no cl and explicit statement as to their prospective or ret spective character. Instances of the first two clas are obvious and have already been alluded to.

The rule as to the third class has been laid do in the following terms in English law and may usefu be cited for guidance even in Indian Courts:

"In a case of that kind your Lordships have examine the subject-matter of the enactment of t particular section you have to construe, to bear in mi the effect of a construction which would make it reti spective and to ask yourself whether it is to be suppos that that construction was intended by the Legislatu to be given to it. Your Lordships will have furth to guide and direct you the observations which we made in this house in *Urquhart* v. *Urquhart* that in a matter of this nature any Court will slow to construe an enactment as retrospective ai thereby as disturbing existing rights unless Parliame has said that the enactment is to be construed retr spectively".[3]

(*iii*) Where retrospective effect has necessarily t be given to any section or sections of a statute it shoul not be carried to a greater extent than is absolutel necessary.

22. Exception in cases of procedure: reason fc such departure.—Where a statute or any of its prov sions relate, however, only to procedure and practic the general rule against retrospective operation is nc applicable and they are held to be retrospective bu

(2-a) 1 Macq. 736.

(3) *Gardiner* v. *Lucas*, (1878) 3 A.C. 582 (589), *per* Lor Cairns, L. C.

subject to the usual exception of cases where the language itself clearly excludes such a presumption. The reason is that considerations of hardship and injustice which govern the interpretation of statutes dealing with vested rights do not apply to statutes which only make an alteration in procedure. A change in the procedure to be adopted in securing a remedy may with perfect propriety be applicable to past as well as future transactions. No person has a vested right in procedure and he is bound to follow such modes of seeking redress as the law may enjoin from time to time: for thereby his rights are in no way jeopardised. When a new remedy is granted or a defective remedy rectified where delays of the laws are remedied where gross or manifest injustice is attempted to be prevented, it cannot be said that the rights of any one are injuriously affected and it would be abominable to contend that any one has a vested right in the impropriety, harshness or inequities of the law. An exception is made, however, even in statutes relating to procedure, if the interpretation that they are retrospective really affects a vested right or tends to encourage breach of faith between the parties. No hard and fast rule can be laid as being applicable to all cases and the language of the statute, its object and effect of the proposed construction may have to be taken into consideration in finding out virtually what is the true intention of the Legislature.

23. **Illustrations from Madras.**—In *Bikkina Ramayya* v. *Adabala Seshayya and others*[4] the Madras High Court held that the right to relief existing from certain jural relations existing between the parties

(4) 30 M.L.J. 338=34 I.C. 475.

is a matter of adjective law and parties were entitle to the new remedy provided by the new Act. Accordingl the parties to a mortgage executed before the Transfe of Property Act had come into force could avail them selves of S. 67 of that Act as there was nothing in S. (*c*) of the Act disentitling them to do so. In *Subrah mani Iyer* v. *Namasivaya Asari*[5] the same Court point ed out that there is no vested right in having a cas tried by a tribunal which has been deprived of jurisdic tion by a subsequent enactment. Such matters wer held to pertain to the domain of processual law and no of vested rights. It was said in the last mentione case that so long as there was no trial no one had right to say that the mode or procedure of trying i shall not be changed. In *Aka Venkata Sivayya* v *Prattipad Panchayat Board*,[6] Rule 33 (1) of the Loca Boards Act, 1930, fixing a period of 15 days for servic of notice for payment of profession-tax and providing for its collection thereafter by distraint, was held to b retrospective as the new Act provided, a period o limitation which was only a matter of procedure. I *Ramakrishna Iyer* v. *Sithai Ammal*[7] it was pointed ou that the right to apply for a revocation of sanction whic was a condition precedent under an earlier Code an was abolished later, was not a mere matter of procedur but a substantive right.[8]

24. Calcutta.—The Calcutta High Court has given expression to the same views in *Janakinath Sing Ra*

(5) 35 M.L.J. 377=1918 M. 162.

(6) 1936 M. 18=1935 M.W.N. 1206=159 I.C. 632=43 M.L.W 214.

(7) 49 M.L.J. 223=1925 M. 911 (F.B.)

(8) *Ramakrishna Iyer* v. *Sithai Ammal*, 49 M.L.J. 223=1925 M. 911 (F.B.).

v. *Niradharan Roy and others.*[9] It was pointed out that matters of altered procedure apply to pending actions where the procedure is altered by statute during the pendency of such litigation. In a suit for possession and mesne profits instituted before the C.P.C. of 1908 had come into force but which came up for trial after the same had come into operation it was held that mesne profits had to be ascertained in the suit itself and not in execution as under the older Code and the rule as to abatement of suits by non-substitution of heirs in proper time applied. It was similarly pointed in *Chunnilal* v. *Corporation of Calcutta*[10] that S. 386 of the Calcutta Municipal Act (III of 1923) was retrospective in effect and that the section applied to business established even before the enactment as the power to prohibit the carrying on of a business which was dangerous to health in the opinion of the Corporation was passed in the interests of public health.

25. **Allahabad.**—In *Bunni Pandy* v. *Brahmder Pandy and another*[11] the Allahabad High Court has pointed out that a new Act altering procedure does not become inapplicable to pending declaratory actions simply because the cause of action for the same arose before the new (Agra Tenancy) Act came into force for the rule as to the appropriate forum for a particular suit is one of procedure and not a substantive right. The plaintiff cannot have a choice of his own forum in spite of an Act which fixes the same on the ground that his cause of action arose before the change had been effected.

(9) 1930 C. 422=57 C. 148.
(10) 1933 C. 732=60 C. 892.
(11) 1931 All. 735=133 I.C. 911=1931 A.L.J. 852.

25-A. In a recent Burma case the Rangoon High Court held that the alterations made by Government of Burma (Adaptation of Laws) Order to S. 10 of the Civil Procedure Code which made a British Indian Court, 'A foreign Court' for purposes of that section in relation to a Burman Court were merely procedural and accordingly a suit instituted before 1—4—1937 could not be stayed after that date on the ground that the matter in issue in that suit was also in issue in an earlier pending suit between the same parties in British India. It was pointed out that the so called right to have a suit stayed under S. 10, C.P.C. was really neither a right nor a privilege within the meaning of Cl. (10) of (Adaptation of Laws) Order which saved only rights and privileges which had been acquired or accrued before that order came into operation. A privilege coupled with a right does not mean an advantage or a boon conferred by the existing procedure but one which is capable of being enforced by action before a Court or which can be a complete answer in law to an action founded on a general right.[12]

26. Rights vested as well as procedural : Limitation. —Among instances of rights which are both vested as well as procedural in character may be mentioned the law of limitation. One case where it was held to be a matter of procedure has already been pointed out.[13] In another Madras case, however, it was pointed out that the law of limitation cannot be so construed as to operate retrospectively so as to take away vested rights or to work manifest injustice. The law of limi-

(12) *Arunachalam Chettiar* v. *Valliappa Chettiar*, 1 F.L.J. 63.

(13) *Aka Venkata Sivayya* v. *Prattipad Panchayat Board*, 1936 M. 18=43 L.W. 214=1935 M.W.N. 1206.

tation is no doubt a law of procedure but it is also a condition annexed to the enforcement of a substantive right though it does not affect the right itself. Where the giving of retrospective effect to the right of procedure would have the effect of defeating a vested right, the rule against retrospectivity extends to remedial rights also.[14] In the above case it was held that the rule of limitation fixing a period of three years for recovering arrears of rent under the Madras Estates Land Act of 1908 was not applicable to cases where the new period of limitation had already expired before the Act came into force. In a still more recent case reported in 1938 Madras 688 already referred to, the Madras High Court held that S. 69 (2) of the Partnership Act which makes the registration of firms a condition precedent to the institution of a suit could not be said to be a matter relating to mere procedure and could not be given retrospective effect as such. Justice Pandrang Rao with whose view Justice Varadachariar agreed stated the position thus, 'The intention of the law of limitation being practically to put an end to existing rights after a certain lapse of time the reason why a new rule of limitation is applied retrospectively is not because the law of limitation is a law of procedure but because the express intention of the law of limitation is to destroy or extinguish existing rights of action after a certain lapse of time. It is retrospective if it is clearly intended to be retrospective and not because it is merely a matter of procedure'. As pointed out by the same learned Judge the real test to determine whether any provision is retrospective or not is not

(14) *Ramakrishna Chetty* v. *Subbaraya Iyer and another*, 24 M.L. J. 54.

whether it pertains to the law of procedure or of substantive law but whether it impairs existing rights including rights of action; and the impairment can be effected not merely by the imposition of a very heavy burden but of any burden, *e.g.*, the duty to register a partnership to acquire a right to sue. A different view has been expressed as regards the character of S. 69 of the Partnership Act in other cases[14-a]

27. A Second Classification of statutes in regard to retrospective effect.—A Second Classification of Acts or provisions contained in them into three classes may be made as follows:—

(*i*) Those that repeal the existing law or provisions therein.

(*ii*) Those that amend the existing law, *i.e.*, repeal and re-enact with or without modifications any provisions of a former enactment.

(*iii*) Those that declare the law.

S. 6 of the General Clauses Act (X of 1897) lays down the rule to be followed in the first class of cases. So far as the Acts and Regulations of the Governor-General in Council are concerned to the extent they repeal any enactments made prior to that Act or passed thereafter, the repeal does not.—

(*i*) revive anything not in force or existence at the date when the repeal takes effect;

(14-a) *Krishen Lal* v. *Abdul Ghafur*, 1935 L. 893=160 I.C. 513; *Danmal Parshotamdas* v. *Baburam Chhotelal*, 58 A. 495=1936 A. 3; *Surendranath De* v. *Manohar De*, 62 Cal. 213=1934 C. 754; *Shahzad Khan* v. *Darbar Babu*, 15 Pat. 810; *Catholic Sangham* v. *Ravi Varma*, 1937 M. 419=45 L.W. 276; *Syed Ibrahim Sahib* v. *Gwrulinga Iyer*, 1937 (2) M.L.J. 717=1938 M. 185 and *Kanniappa Naickar and Co.* v. *Commissioner of Income-tax, Madras*, (1937) 1 M. L. J. 619=I.L.R. 1937 M. 814=A.I.R. 1937 M. 316 (S.B.).

(*ii*) affect the operation of the prior enactment repealed or anything done or suffered under it;

(*iii*) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed,

(*iv*) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed;

(*v*) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment and any investigation, legal proceeding or remedy may be instituted, continued or enforced and any penalty, forfeiture or punishment may be enforced as if the Repealing Act or Regulation had not been passed. This is subject to the usual exception that it would be otherwise if a different intention appears from the Act itself. S. 7 of the same Act enacts that no enactment which is wholly or partially repealed can be revived wholly or partially without an express reservation to that effect in the enactment itself.

28. Effect of repeal and re-enactment.—The same is applicable to the second class of cases so far as the repealing portion of the enactment or of its provisions is concerned. In the *Union of South Africa* v. *Simmer and Jack* [15] it was held that an Amending Ordinance should not be read as incorporated with the principal ordinance so as to relate back to its date. In *Sundarmull* v. *Laduram Kaluram* [16] it was held that where there are general words in a later Act capable of reasonable and sensible application without

(15) 1918 P.C. 161.
(16) 1924 C. 240=50 C. 667=83 I.C. 757.

extending them to subjects specially dealt with by earlier legislation it is not to be understood that the earlier and special legislation is indirectly repealed and altered or derogated from merely by force of general words without indication of a particular intention to do so.[17]

29. Declaratory Acts.—The third class of Acts called Declaratory Acts are Acts which merely declare the law as it exists at the date the enactment is passed. Such Acts might and would normally have a retrospective effect.[18] A mere description of the Act as declaratory, however, is not decisive of its nature as such while it may not infrequently happen that some provisions in an Act may be declaratory though not the Act as a whole. Even if a provision is declaratory of the law, it does not oust a Court trying the matter in the absence of any language to that effect. The use of the future tense in the language of a provision is sometimes helpful in determining whether such a provision, not expressed to be retrospective or described as declaratory can nevertheless be construed to have a retrospective effect.[19] The context of the statute and the terms of the clauses will have to be examined even in case a statute is in a declaratory form to pronounce it to be retrospective in effect.[20]

30. Declaratory in form and substance.—Two obvious cases of statutes which are both declaratory in form and substance and which have been held to be

(17) *Steward* v. *Vera Cruz*, (1884) 10 A.C. 59, *per* Lord Selborne, L.C.

(18) *Jones* v. *Bennett*, (1890) 63 L.T. 705.

(19) *Smiths* v. *National Association of Operative Plasters*, (1909) 1 K.B. 310.

(20) *Per* Ananthakrishna Iyer, J., in *Pannirselvam* v. *Veeriah Vandayar*, 60 M.L.J. 191 at 205=54 M. 627.

retrospective in effect may be mentioned. Act XXVII of 1926 which was passed to 'explain' certain provisions of the Transfer of Property Act is an instance in point. The above Repealing and Amending Act introduces a definition of the word 'attested' for the first time taking it word for word from the Indian Succession Act (XXXIX of 1925). Prior to this amendment the High Courts and the Privy Council held that the mortgagor must sign the mortgage executed by him in the presence of at least two attesting witnesses to make it a valid mortgage and that a mere acknowledgment by the mortgagor of his executing the document was not enough. By the Repealing and Amending Act X of 1927 the definition was further amended so as to read (in its present form) as follows "'attested'—means and must be deemed to have always meant, etc.," and the same makes the amendment retrospective in effect so as to affect transactions both prior as well as subsequent to the amendment.[21] On similar grounds it was held that S. 6 of the Provincial Insolvency Amendment Act (X of 1930) which makes it clear that the period of two years mentioned in S. 53 of the Act should be computed from the date of the presentation of the petition for adjudication applies retrospectively even to proceedings commenced before the amendment and pending at the time it came into force.[22] In one of the cases already referred to[23] the Madras High Court while repelling the contention that Act XI of 1930 amending the Local Boards Act, 1920, ousted the juris-

(21) *Veerappa Chettiar* v. *Subramania Aiyar*, 55 M.L.J. 794=52 M. 123 (F.B.).

(22) *Thaticherla Pichamma* v. *Official Receiver of Cuddapah*, 59 M.L.J. 686=54 M. 12=1930 M. 834 (F.B.).

(23) *Rao Bahadur A. T. Pannirselvam* v. *A. Veeriah Vandayar and another*, 60 M.L.J. 191=54 M. 627.

diction of the Sub-Judge who entertained an election petition before the Amending Act came into force pointed out that the amended sub-S. 54 (2) of the Act makes two marked changes in respect of the eligibility of persons holding office as Government Pleader and Public Prosecutor even though it also clears some doubts and it cannot therefore be termed a declaratory provision. It was held that the words 'if any question arises' in S. 54 (2) of the Amended Act is no indication of the past but grammatically the reference was to the future. It was pointed out in another Madras case that the words 'whether before or after the passing of this Act' indicated the intention of the legislature to make the provisions retrospective in effect and Ss. 8, 37, 187 and 188 of the Madras Estates Land Act were stated to be sections in point.[24] In another case it was held that where an enactment withdraws certain classes of cases from the jurisdiction of the Small Cause Courts it cannot be said to declare the law and cannot have a retrospective effect.[25]

31. Validating Acts.—Validating Acts afford another instance of Acts which are retrospective in effect. It has been held in *Shantiniketan Co-operative Housing Society, Ltd., and another* v. *Madhavlal Aminchand and others*,[1] that the Bombay Act VIII of 1933 which adds S. 72-A to the Bombay Co-operative Societies Act of 1925 was a validating Act and necessarily retrospective in operation. The language of the Act substituting 'Bombay Co-operative Societies Act,

(24) *Venkata Perumal* v. *Ramudu*, 39 M. 84=28 M.L.J. 81=27 I.C. 683.

(25) *Subramani Iyer* v. *Namasivaya Asari*, 35 M.L.J. 377=45 I.C. 11.

(1) 1936 Bom. 37=60 B. 125.

1925' for 'Bombay Co-operative Societies Act, 1912' in S. 3 (2) of the Land Acquisition Act clearly pointed to its retrospective character. The Amending Act in this case was clearly an Act of Indemnity to validate acts or proceedings after 1925 and the intention as to retrospective effect was put in the clearest terms. Such being the case it was held that the appellate Court could give effect to the new legislation though by doing so it was interfering with the decree passed in the Court of the first instance based on an earlier law.

32. Rule not applicable where new laws are introduced. —In a Full Bench decision of the Madras High Court a point arose as to the effect of a change of the definition of the words 'excepted temple' in an Amending Act on a decision passed under the prior law under which the definition was more restricted than under the later Act. A decision was passed in 1927 under the Hindu Religious Endowments Act, 1927, that a temple was an 'excepted temple' within the meaning of the definition of the term as it stood at that time. Under the Amending Act of 1930 the definition was altered and the temple in question came within that definition and it had to be considered whether the temple was governed by the earlier decision or the later Amending Act. Their Lordships held that there was no scope for the application of the law as to retrospective effect as there was no interference with a vested right but only a re-grouping of temples in two different ways at two different periods and the finality to a decision of the Board can only have relation to the definition obtaining at any one period.[2] Under the earlier Act II of 1927

(2) *Board of Commissioners for the Hindu Religious Endowments, Madras* v. *Eatnasami Pillai*, (1937) 1 M.L.J. 105 (F.B).

it was only temples with an income above the figure mentioned in S. 4 that could be brought within the jurisdiction and management of the Madras Hindu Religious Endowments Board. It was felt, however, that other temples also were in a neglected and mismanaged condition and should be brought within the ambit of the Act and to effectuate the intention the Amending Act of 1930 was passed. Under those circumstances it could hardly have been contended by an owner of a temple that because under the prior Act he was not liable to pay any contribution and was held not to be liable to pay any such contribution it precluded the Legislature from extending the scope of the Act and bringing such temples also within the scope of the Act nor could he claim a vested right to have his temple ever excepted from the jurisdiction of the Board. The matter was one for the Legislature to deal with according as it thought fit and the Amending Act could properly be made applicable to all temples in existence at the time it came into force. On similar grounds the same Court in holding in *Lakshmi Ammal* v. *Anantha Rama Iyengar*[3] that the Hindu Law of Inheritance (Amendment Act (XI of 1929) was applicable to successions arising after the Act was passed though the last male owner died prior to the Act, the ground alleged was not that it had a retrospective effect but that the last male owner to whom succession had to be traced was in law deemed to be fictitiously surviving till the death of his widow which happened in the case after the coming into force of the amendment and that during the lifetime of the female heir nobody had a vested right as it

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(3) (1937) 2 M.L.J. 209 at 216 (F.B.).

could not be predicated of any one that he was the next reversioner.

33. Postponement of operation whether evidentiary of retrospective effect.—The fixing of a period in an Amending Statute after which it is to come into force, has sometimes been held to be evidence of an intention on the part of the Legislature that it is to have retrospective effect. In *Towler* v. *Chatterton*,[4] where the question involved was whether an oral promise to pay a debt could save limitation as an acknowledgment after Lord Tenterden's Act which made such promises insufficient unless they were reduced to writing, it was held the Act was retrospective and applied to an action begun before the Act but not tried till after it was passed on the ground that the Legislature had granted a period of 8 months to prevent all mischief of *ex post facto* legislation by giving due notice to those that might feel it to be a hardship. It was so held in *Dannal Purshotam Das* v. *Babu Ramchhote Lal*,[5] where additional time was granted for the coming into force of the Partnership Act (IX of 1932) in regard to the provision requiring firms to get themselves registered as required therein beyond the date when the rest of the Act was to come into effect for the benefit of persons becoming acquainted and complying with the terms of the drastic section. In the above case both on the language of S. 74 and partly on general principles it was held that the saving in S. 74 of the new Act was intended to apply to substantive rights acquired before the Act but not to matters of procedure and the procedure laid down in S. 69 of the Partnership Act (1932)

(4) (1852) 31 R. R. 411=21 L.J.C.L.M.C. 193.
(5) 58 A. 495=1935 A.L.J. 1245=1936 All. 3.

should be followed after 1—10—1933. Sulaiman, C.J., came to the same conclusion as his learned brother Bennet, J., though by a somewhat different reasoning. The Madras High Court, however, in a very recent case refused to follow the reasoning in the Allahabad case and has held that S. 69, Cl. (2) of the Partnership Act cannot affect contracts entered into before the Act came into force and that S. 74 (*b*) of the Act under all circumstances saved the remedy in respect of rights acquired or accrued prior to the Act. Justice Varadachariar further held in this case that the interval of one year granted before the enforcement of S. 69 can be explained on grounds other than the desire or the intention of the Legislature to make the provision retrospective in effect and that there were other considerations such as the necessity to bring into existence the necessary machinery for the framing of the rules under S. 71 which could cogently explain the interval granted by the statute.[6]

33-A. The rule against retrospective operation applies with particular force to penal statutes.[7]

34. Expropriatory statutes.—While it is clear that an intention to take away vested rights cannot be spelled out of the terms of a statute where the language is not clear or explicit, it would seem to be equally clear that it lies undoubtedly in the power of the Legislature to take away such rights if it so chooses. But in order to have that effect there should be a clear indication of such inten-

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(6) *Girdharilal Son and Co.* v. *K. Gowder*, 1938 M. 688 at 704= (1938) 2 M.L.J. 44.

(7) *Parsram* v. *Emperor*, 1931 L. 145.

tion and it should be discoverable from the express language of the Legislature itself.[8] As the Privy Council put it in *Australian Commonwealth* v. *Hareldell, Limited* in considering the effect of New South Wales Mining Act of 1906 an intention to alienate private rights should not be imputed to the Legislature unless expressed in clear terms.[9] The expropriation may be for a private gain or a public advantage but in either case where the owner is deprived of his property it is a long accepted rule of interpretation that he cannot be so deprived without his being paid compensation for the same.[10] It was thus pointed out in the Patna case above cited that the amendment of the period of limitation for recovery of rent under the Bihar Tenancy Act under Amending Act of 1934, para. 2 (*b*) (ii) to an year from the last day of the Agricultural year did not affect the suit for recovery of rent for faslis 1340 and 1341 so far as the earlier fasli was concerned. The Act was published on 14--11--1934 and a notification was issued in the Orissa Gazette stating that the Act would be enforced as from 10—6—1935 long prior to which date the period of limitation for fasli 1340 had expired. The effect of giving retrospective effect to the legislation would have been to deprive the party suing of his right to recover the rent for fasli 1340, without any notice to him by the Legislature and it was held that could not be deemed to be the intention of the Legislature in this case. Amongst instances of expropriatory acts where compensation, however small, is provided for

(8) *Bhadri Narain Sing* v. *Ganga Sing and others*, 1937 Pat. 605 =18 P.L.T. 731.

(9) *Australia Commonwealth* v. *Hareldell*, 1921 P.C. 224.

(10) *Inglewood Pulp and Paper Co., Ltd.* v. *Newbrunswick Electric Power Commission*, 1928 P.C. 287.

may be mentioned. The Madras Estates Land (Third Amendment) Act 1936 which introduced for the first time S. 185-B under which a landlord who owned an inam village which was not an 'estate' prior to the commencement of that Act but became an estate by virtue of that Act was compulsorily bound to confer upon the tenant a permanent right of occupancy on the tenant paying him as compensation an amount equal to the annual rent payable on the land and the cost of preparing an instrument to convey the same. It was held in *Peravali Kotiah and others* v. *Ponnappali Ramakrishnayya and others*,[11] that S. 3 of the Amendment Act was *prima facie* retrospective and that it applied to pending suits also as there was no saving in regard to the same the only saving being in regard to a "final decree or order of a competent Civil Court establishing that the tenant has no occupancy right".[12] It was stated that the object of the section was to confer occupancy rights on the tenants in unmistakable terms and respect for pending suits could not be assumed. This was based on the reasoning of the cases under the Madras Estates Land Act prior to the amendment where S. 6 of that Act which confers occupancy right on 'every ryot now in possession or hereafter admitted into possession' of ryoti land in an estate was construed to operate on pending suits also. The position was thus explained by Miller and Krishnaswamy Iyer, JJ., in their order of reference to a Full Bench.[13] "The expression 'every ryot now in possession' shall include every person who continues in possession at the com-

(11) 1937 M. 685=1937 M.W.N. 282=(1937) 2 M.L.J. 573.

(12) S. 8, sub-S. (5).

(13) *Kanakayya* v. *Janardhana Padhi*, (1913) 36 M. 439=21 M.L.J. 31=1910 M.W.N. 841 (F.B.).

mencement of the Act". It was the deliberate intention of the Legislature to confer a right of occupancy on a ryot in possession at the date of the commencement of the Act; such an interpretation may have the effect of nullifying vested rights under contracts previously entered into. But it is impossible to refuse to place the interpretation that ryots in possession of land at the date of the commencement of the Act are entitled to occupancy rights on the mere general principle that a legislative enactment should not be interpreted so as to effect vested rights or to give it retrospective operation by applying it to pending suits. As pointed out by Bowen, L.J., 'No doubt, as a general rule, a statute does not effect pending proceedings, but that rule is only a guide where the intention of the Legislature is obscure, it does not modify the clear word of a statute.'[14]

In a later case Venkatasubba Rao, J., held that the effect of the amendment of S. 3 (2) (*d*) of the Madras Estates Land Act (I of 1908) was to add another category to the category of 'estates' under Act (I of 1908) and that the words of the amended section should be read as though they were present throughout in the earlier and unamended Act.[15] The language of the decision, however, appears to have been too widely worded as there are sections in the Amended Act which clearly show that for certain purposes the character of whole inam villages, which were not 'estates' prior to the amendment but which became such by virtue of such amendment is preserved even under the Amended Act. *Vide* Explanation (2) to S. 6 and S. 185-A.

(14) *Quilter* v. *Mapleson*, (1882) 9 Q.B.D. 672=52 L.J.Q.B. 44.
(15) *Marneni Kondappa* v. *Pamidi Mahalakshmamma*, 1938 M. 339.

35. In *Govinda Paramaguruvu* v. *Dandasi Pradhanu*,[16] where before the first July, 1908, the date when the Madras Estates Land Act came into force, a landlord obtained a decree for possession of ryoti land, Benson and Sankaran Nair, JJ., held that a decree for possession obtained before the commencement of the Act did not deprive the tenant in possession of his occupancy right under the Act. This principle was approved by the Privy Council in a case arising from the Bihar Tenancy Act (Amending Act of 1934).[17]

(16) 20 M.L.J. 528=7 I.C. 74.

(17) *K. C. Mukherjea* v. *Mt. Raman Rattan Kuer*, 1936 P.C. 49=15 Pat. 268=63 I.A. 47 (P.C.).

CHAPTER II.

Rule against Evasion.

1. **Rule against evasion explained.**—Another cardinal principle in the interpretation of statutes is that they should be so construed so as to defeat all attempts to do or avoid in an indirect or circumlocutory manner what has been prohibited or enjoined to be done and to prevent and render unavailing all such attempts in order that the real objects of a statute as gathered from its provisions are not frustrated but effectively carried out. This rule is more compendiously called the rule against evasion. The idea however is not free from difficulty. Between an attempt to take advantage of the *lacuna* in a statute and conforming to its language and an attempt to nullify it by affecting to come within the terms of its language but frustrating the intention of the Legislature as conveyed through the language must be a wide distance apart and what the rule prohibits is the latter and not the former. As Maxwell points out the word 'evade' is capable of being used in two senses, 'one which suggests underhand dealing and another which means nothing more than the intentional avoidance of something disagreeable'.[1] Understood in the first sense, it is nothing short of fraud and no Courts can countenance an attempt to play fraud upon the statutes passed by the Legislature of their country. Whenever parties attempt to do indirectly what is prohibited to be done directly and in

(1) Maxwell, Interpretation of Statutes, Chapter IV, quoting *Simms v. Registrar of Probates*, 69 L.J.C.P. 56.

clear terms, all attempts to that end are discouraged by the judiciary whose sole object is to establish and effectuate the intention and objects of the statute. The same thing has been expressed by stating that the object of interpretation is to remove the 'cobweb varnish' and show up a transaction in its true light,[2] not merely to see a transaction but to see it through, and if in reality a transaction falls within the prohibition of a statute it will not be permitted to escape by any human ingenuity in attempting to dress it in forms which attempt to mask its real character and warp its true appearance.

2. Laws made for being obeyed.—As Chief Justice Wazir Hasan pointed out in a recent case[3] the Legislature enacts laws in order that they may be obeyed and to enforce their obedience, where an attempt is made to disobey them. Where certain duties are imposed on a class of individuals it is the object of the Legislature that they should be voluntarily obeyed by that class of individuals and where it is not so done to enforce their obedience if necessary. Else according to the learned Judge, it would be a misnomer to call any piece of legislation a law as it would be more proper to call it a pious wish. The clauses in statutes or deeds should be so interpreted as not to avoid the purpose for which they are made and when their meaning is called in question they are to receive a wider or narrower construction according as the one or the other will best effectuate the purpose of the statute.[4]

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(2) *Collins* v. *Blantern*, 95 E.R. 850=2 Wills. 346.

(3) *Mahomed Baqr and another* v. *S. Mahomed Kasim and others*, 1932 Oudh 210=7 Luck. 601.

(4) *Madho* v. *Umrao*, 17 I.C. 370.

3. **Cases where evasion was disallowed.**—Following the above principles it was held that the stated object of the Mussulman Wakf Act (1923) being the better management and the ensuring, keeping and publication of better accounts in regard to 'Wakfs', the contention that courts had no jurisdiction to deal under the Act when once the Mutwalli refused to admit or denied a Wakf, was rejected, and the Courts assumed jurisdiction notwithstanding the absence of any specific procedure in the Act, it being observed that to do otherwise would be to leave the evil rampant the removal of which was the principal object of the Act. It was stated that recourse could be taken to S. 4 of the C.P.C., where there was no specific provision to the contrary in any special or local law. In an early case in the Allahabad High Court, Straight, C.J., held that the words 'held by him as Sir' should be construed as meaning 'land belonging to him or to which he is entitled as Sir' so as to effectuate the intention of the statute in which the words occurred instead of refusing to apply the words to a vendor who had mortgaged the land with possession at the time of the sale of his proprietary rights as any other construction would leave the door open to the very mischief at which the Act was aimed.[5] Similarly in a Madras case which arose under S. 12 of Act VII of 1870 Justice Holloway refused to grant relief where an action was really one for ejectment but couched in a form so as to make it appear that the relief asked for was a declaration. His Lordship held that provisions for declaratory suits require great care and circumspection and should not be made where their object is to evade the stamp laws or to get

(5) *Harjas and others* v. *Radha Kishan*, 8 A. 256.

a relief of ejectment under the colour of declaration and make it difficult for the adversary to raise questions that would be open to him otherwise.[6] To the same purpose was the decision in *Ganpat Guru* v. *Ganpat Gir*,[7] which arose under S. 42 of the Specific Relief Act (I of 1877) where the High Court refused to exercise its discretion in favour of a party who desired to get a declaratory decree on a stamp of rupees ten for a more valuable relief stating that any such interpretation would have the effect of countenancing an evasion of the stamp law. In a more recent case Jenkins, C.J., refused to grant a prayer which though in the form of a declaration really asked for consequential relief as it was becoming a common fashion to attempt evasion of court-fees by casting prayers of the plaint into a declaratory shape and remarked that Courts should be circumspect and even chary as to the declaration they make. His Lordship qualified his decision by remarking that nothing could be done where the evasion was and could be successfully done.[8]

4. Evasion of fiscal statute.—The attempt to evade the law generally occurs in the case of the Stamp Act, Court-Fees Act, and other fiscal Acts to avoid the payment of revenue to Government and also in cases like the Indian Registration Act where attempts are made to get documents registered in the office of a nearer Sub-Registrar though the properties are situate within the jurisdiction of a Sub-Registrar having his office farther away from the place where the parties

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(6) *Chockalinga Pehana Naicker* v. *Achiyar*, 1 M. 40 at 44.
(7) 3 Bom. 230.
(8) *Deokali Koer* v. *Kedar Nath*, 39 C. 704.

reside to avoid the expense of a long journey and other incidental expenses.

5. **Legal avoidance no evasion.**—The foregoing refers to what may be called 'untruthful' or fraudulent evasion of a statute or its provisions. It hardly touches cases where a person openly takes advantage of a loop-hole or a *lacuna* in a fiscal or other law and claims to be strictly within the letter of the law and therefore entitled to enjoy the benefit of the same. In this view of the matter it becomes very important to mark the difference and keep the distinction in mind between 'evading' the payment of duty and 'avoiding' it. The latter is perfectly legitimate and the only method of rectifying it is by means of legislation and not by judicial interpretation. Thus for example, if parties execute deeds for sums of less than rupees one hundred each instead of one consolidated deed for rupees one hundred or more than one hundred rupees in order to avoid the registration expenses and the publicity consequent on registration there is nothing which prevents the parties from doing so.[9] The same principle was enunciated by Lord Esher in *Commissioner of Inland Revenue* v. *Angus*[10] when he said that if a vendor can convey property sold to the purchaser without the execution of any instrument there could be no objection to that course. The Crown must make out its right to the duty, and if there be a means of evading the stamp duty so much the better for those who can evade it. It is no fraud upon the Crown, it is a thing they are perfectly entitled to do. The Crown cannot have the stamp duty unless the parties choose to effectuate the transaction by an

(9) *Bamji Mal and others* v. *Chote Lal and Bandu Lal*, 29 All. 50.
(10) L.R. 23 Q.B.D. 593.

instrument which of itself conveys the property and if they choose to be satisfied with something less, the matter is not brought within the section. The Madras High Court has put the same thing in a strong language in *Pathumma Umma and others* v. *A. Mohideen and others*[11] already referred to by stating that it was open to the parties to avail themselves of any camouflage that the law allows or does not forbid. Chief Justice Jenkins of the Bombay High Court held the opinion that if a plaintiff can successfully evade the payment of court-fee it is by all means open to him to do so and a Court can under no circumstances withhold a relief to which a party is entitled as of right.[12] Thus in a case where a decree for ejectment was passed and in filing an appeal therefrom the appellant contended that he was entitled to the value of the improvements, the appellant instead of paying the court-fee in appeal on the value of the improvements which was more than the value of the suit for ejectment as computed under the Court-Fees Act, drafted his grounds of appeal in such a manner as though it was an appeal against the decree in ejectment itself, it was held that there was nothing to prevent the appellant taking up such a course of conduct.[12-a] Almost the same point was decided in another case from the Lahore High Court[13] which held that the anomaly of the Court-Fees Act that a person who appeals against a part of the decree may have

(11) 1928 M. 929.

(12) *Kunji Behari Prasadji* v. *Keshavlal Harilal and others*, 28 B. 567.

(12-a) *Pathumma Umma and others* v. *A. Mohideen and others*, 1928 M. 929.

(13) *Nazar Mahomed* v. *Kalaram and others*, 1929 L. 190 at 191 =9 Lah. 563.

sometimes to pay more court-fee than one who appeals from the whole of it does not disentitle a litigant to appeal against the whole decree though he intends to attack only a part of it. In another case a deed of sale which required to be registered was not registered and the vendor in order to avoid the defect gave the purchaser a bond confirming the sale and presented the bond with the unregistered sale annexed thereto for registration and the bond was registered with the endorsement of registration on the sale instead of on the bond. The Allahabad High Court held it to be an obvious attempt to defeat the provisions of the Registration Law[14] but the Privy Council reversing the decision of the High Court held that the bond was duly registered and the fact that the prior deed was not duly registered was no reason why the deed afterwards registered should not be admitted as evidence of title and there was nothing in this contravening the objects of the Registration Act.[15]

6. Limits of the rule: Illustrations from the Registration Act.—The limits of the rule both in its application as well as its exclusion are exemplified in a series of recent cases—some of which are the latest authoritative pronouncements of the Privy Council—dealing with attempts made to evade the provisions of the Indian Registration Act by including 'notional' or 'fictitious' property within deeds to be registered to enable them to be registered by Registration Officers who would not but for such inclusion have even *prima facie* jurisdiction to entertain an application for registration as being

(14) *Mathuradas and others* v. *Mitchell*, 4 All. 206.

(15) *Alexander Mitchell* v. *Mathuradas*, 12 I.A. 150=8 All. 6 (P.C.).

within the provisions of S. 28 of the Act (which requires 'the whole or some of the property' comprised in a document to be within the jurisdiction of the sub-district of the Sub-Registrar to enable him to register the same.). In the early cases it was held that 'some portion of the property' meant some substantial portion and not an insignificant piece of land such as the land measuring 500 sq.yds. which alone was the property that lay in the sub-district within the jurisdiction of the Sub-Registrar who actually registered the document in a case where the major part of the property comprised in a mortgage was two entire villages, and shares in fourteen villages in one district and a village in another district both outside the territorial jurisdiction of the Sub-Registrar.[16] In later cases the insistence on the substantial character of the property mortgaged was omitted and it was held to be sufficient if any portion of the property was situate within the Sub-Registrar's jurisdiction. In the earliest Privy Council decision[17] which had to deal with the matter where the property within the jurisdiction of the Registering Officer was described as 25, Guru Das Street 'which was fictitious and non-existent' their Lordships held 'that the parcel was in fact a fictitious entry and represented no property which the mortgagor possessed or intended to mortgage or that the mortgagee intended to form part of his security' and that such an entry intentionally made use of by the parties for the purpose of obtaining registration in a district where no part of the property actually

(16) *Sheo Dayal* v. *Hari Ram*, 7 All. 590.

(17) *Harendra Lal Roy* v. *Hari Dasi*, 41 C. 972=41 I.A. 110=23 I.C. 637 (P.C.).

charged or intended to be charged in fact exists, is a fraud on the Registration law, and no registration obtained by means thereof is valid. Their Lordships put it effectively by stating that to hold otherwise would amount to holding that mortgages relating solely to land in other parts of the Presidency could be validly registered by the Sub-Registrar of Calcutta if the parties merely took the precaution to add as a last parcel, Government House, Calcutta or any other similar item. In the next Privy Council case[18] the mortgagor purchased shortly before the execution of the mortgage a Kawri Share in Mozafferpur for Rs. 50 without a registered deed or delivery of possession under S. 54 of the Transfer of Property Act in order to get a mortgage deed comprising in the main a village in the Darbhan District, registered outside it. Their Lordships held that the non-registration and non-delivery of possession under the Kobala clearly pointed to absence of intent to acquire the kawri share in the Kolhna property and all that was wanted was the use of its name for registration and that Rs. 50 was paid for such use. In the third Privy Council case reported in *Collector of Gorakhpur* v. *Ram Sundar Mal*[19] their Lordships had again to consider the meaning and import of the term 'fictitious' used in *Harendra's case.* The deed in the case was a sale-deed comprising in the main a parcel of four villages of the Majhauli Estate and a separate item, a third share in a sitting room in a garden appertaining to the Majhauli Kothi in Mohalla Dandapur, Gorakpur, whose value compared with the main property was insignificant, almost derisory. The

(18) *Biswanatha Prasad* v. *Chandra Narayana Chowdhury,* 48 C. 509=1921 P.C. 8=48 I.A. 127=25 C.W.N. 985 (P.C.).

(19) 38 C.W.N. 1101=61 I.A. 286=1934 P.C. 157 (P.C.).

observations of the Privy Council in arriving at the conclusion that the property was fictitious and was never intended to pass but was a device and fraud to get the same registered at Gorakhpur bear quotation. Their Lordships observed: "The villages yield a gross income of nearly Rs. 10,000 and the Government revenue is Rs. 8,213. In the claim the entire summer room is valued at Rs. 150. The purchase price fixed by the deed was, as has been seen Rs. 24,000. The inclusion in the parcels of the fraction of the room referred to had, it has been found, no influence whatever upon that price, arrived at, as it will be re-called it was, irrespective of actual value. The room is described by the learned District Judge as 'A Pukka' platform, circular in shape having a diameter of thirteen and a half feet and covered by a tiled roof". It is situate in the midst of a walled garden surrounding the Majhauli Kothi. No part of the garden is included in the sale. The purchaser is by the deed given no right of way or other access to the room.

"It is accordingly true of it to say that as a subject of sale this item was of no real value, and that not only from the interest in it conveyed, but from its land-locked situation it was a subject incapable of enjoyment by the purchasers. It has been found, in the language of the learned District Judge, that this insignificant item of propery was never contemplated as really forming a part of the consideration and was entered in the sale deed presumably with the only object of getting the deed registered at Gorakhpur.

* * * * *

"Now the learned Judge, so soon as he found that the sitting room was an existing thing, so that its inser-

tion as a subject of sale could not, as he thought within the decision of this Board in *Harendra* v. *Hari Dasi Debi*[19-a] be regarded as 'fictitious', decided that he was not at liberty to consider whether it was the intention of the parties that the sitting room should be an effective subject of sale. They had kept within the letter of the law, he thought, and the registration must be upheld. It seems from some passages in his judgment that if he had felt himself at liberty to consider the intentions of the parties in this matter, he might have reached the same conclusion as that at which their Lordships have arrived". "In the High Court the learned Judges were of opinion, and their Lordships think rightly so, that they were bound to go into this question of intention, and having done so they arrived at the conclusion that the entry of the sitting room in the deed was not a fictitious entry within the meaning of the decision of the Board already cited, and although on the facts of the present case one could not help feeling that the parties to the sale-deed under consideration attempted to juggle with the registration law, still the question was whether they had overstepped the bounds laid down by the law, and the learned Judges felt that that question must be answered in the negative. "In reaching that conclusion, however, they failed to refer to or to take into account all the circumstances which their Lordships have detailed, and it becomes the duty of the Board to consider the question afresh in their light.....

"They have done so and, having regard specially, although not exclusively, to the facts that this undivided share in this sitting-room was agreed by one of the pur-

(19-a) 41 C. 972=41 I.A. 110=23 I.C. 637 (P.C.).

chasers to be of no value, that both in respect of the interest taken in it and in respect of its complete inaccessibility, it was incapable either of being utilized or enjoyed by the purchaser, that the vendor refused to include in the sale any subject in Gorakhpur to which these disadvantages did not attach, they think that one of two inferences alone is possible; either that it was never intended by either party that the sitting room should for any purpose other than that of registration be subject of sale at all, or that the vendor only included it because he knew that it never could become an effective subject of enjoyment or occupation by the purchasers. The word "fictitious" used in *Harendra* v. *Hari Dasi Debi*[19-b] is not confined to non-existing properties. It is satisfied if the deed does not "relate" to a specified property for any effective purpose of enjoyment or use.

"In their Lordships opinion, all the facts of the case, if not stronger, are at least as strong as those in either *Harendra* v. *Hari Dasi Debi*[19-b] or *Biswanath Prasad* v. *Chandra Narain*,[19-c] and, paraphrasing the words used in the latter case, the circumstances here leave in their minds no doubt that the parties never intended that this undivided share of this sitting-room should really be sold. The so-called sale was a mere device to evade the Registration Act".

November mortgage case.—In a more recent case dealing with the same subject-matter in the Calcutta High Court Justice Costello applied the principles enunciated by the Privy Council to a deed of mortgage

(19-b) 41 C. 972=41 I.A. 110=23 I.C. 637 (P.C.).

(19-c) 48 C. 509=1921 P.C. 8=48 I.A. 127=25 C.W.N. 985 (P.C.).

called the November mortgage of the year 1932. The attempt at evasion or committing fraud on the Registration law was effected in this case by the inclusion of 'a right to receive one-fourteenth share of the annual rent of one rupee of property as lessor thereof'. The property was provided by a person who was described as a professional provider of jurisdiction property, an attorney who acted as a go-between and as a lawyer for both the mortgagor and the mortgagee. Naresh Chandra Pal conveyed on the same date as the mortgage his interest in property described as 43|1, European Asylum Lane, to one Narain Chandra Das. The interest conveyed was 1|6 of that property, the consideration being Rs. 300 provided by the proposed borrower. The sum actually paid was Rs. 350 minus Rs. 50 set apart as the costs of the attorney who acted on that behalf. Simultaneously with the conveyance of that one-sixth share in the premises from Naresh Chandra Pal to Narain Das, the latter granted a perpetual lease of that one-sixth share to the vendor the rent reserved for the perpetual lease thus created amounting to one rupee per annum. Contemporaneously with this transaction Narain Das completed the matter by conveying to Premsukh and his family the mortgagors in the case 1|14 part of the 1|6th share of his reversionary right and it was really in respect of that conveyance that Rs. 300 was provided. It appears therefore that Premsukh and his family (the mortgagors) acquired by virtue of this transaction a reversionary interest dependent on the perpetual lease in a fourteenth of one-sixth share of the premises No. 43|1, European Asylum Lane, in other words a reversion dependent on the lease of which the rent reserved was not

more than one rupee. The value was thus infinitesimal. The learned Judge held that the Court could go behind the face of the instrument whether it was a conveyance or a mortgage and ascertain for itself on evidence whether or not the property which is said to be within the jurisdiction of the Court is a real property included in the conveyance or the mortgage as the case may be fit for registration and whether it was the intention of the parties that a particular property should really be the subject-matter of the sale or the mortgage. While conceding that the registration could be supported under S. 30 of the Registration Act the learned Judge nevertheless held that he was satisfied under the circumstances that it could not be said that there was any intention to treat 43|1, European Asylum Lane, as an effective or even an inducing part of the mortgage. It was not included for any effective purpose of enjoyment or use.[20]

7. **Madras.**—A single Judge of the Madras High Court has reiterated the same principle in *Karutha Syed Mahomed Rowther* v. *Official Receiver, Coimbatore*,[20-a] where it was held that where the vendor neither intends to sell nor the purchaser intends to buy any particular item of property included in the transfer and the inclusion of such property is merely a device to evade the provisions of the Registration Act to get the deed registered at a particular place there cannot be said to be an effective registration of the deed at all.[21]

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(20) *Prem Sukh Mehta* v. *Mangal Chand Maloo and another*, 41 C.W.N. 854.

(20-a) 1937 M. 32=168 I.C. 87.

(21) *Karutha Syed Mahomed Rowthar* v. *Official Receiver Coimbatore*, 1937 M. 32=168 I.C. 87.

8. Where the Legislature, wants to avoid an evasion of its provisions it becomes necessary for it to embody in its statutes clear provisions so as to make it impossible for such evasion and to punish the same where that is the object of the enacting authority (*vide* S. 65 of the Indian Stamp Act).

CHAPTER III.

Rule against Inconsistency or the Rule of Harmony.

1. **Rule of harmony explained**—*Brett* v. *Brett*.— It is a settled rule of construction that an Act should be construed so as to be consistent with itself and each and every one of its parts should be given a meaning so as to lead to harmony and not to mutual conflict or repugnance to each other. Construction is to be made of all the parts of a statute and not of any one part by itself.[1] The principle is explained by Sir John Nicholl in *Brett* v. *Brett*.[1-a] "The key to the opening of every law is the reason and spirit of the law—it is the *animus imponentis*—the intention of the law maker expressed in the law itself taken as a whole. Hence to arrive at the true meaning of any particular phrase in a statute, that particular phrase is not to be viewed detached from its context in the statute, it is to be viewed in connection with its whole context meaning by this as well the title and preamble as the purview or the enacting part of the statute. It is to the preamble more especially that we are to look for the reason or spirit of every statute, rehearsing thus, as it ordinarily does the evils sought to be remedied or the doubts purporting to be removed by the statute and so evidencing in the best and most satisfactory manner the object or intention of the Legislature in making or passing the statute itself'. As has been observed already the true meaning and the

(1) Heb. 171.

(1-a) 3 Add. 213=162 E.R. 457, quoted in *Kedar Nath* v. *Pearey Lal*, 1932 Oudh 152 (F.B.).

exact scope and significance of a passage in a statute may be found not merely in the words of that passage but on a comparison of the same with other parts of the statute and the intention of the legislature ascertained in that way.[2] It is the function of a Court of law to properly adjust various remedies in its power and to apply them to advance the ends of substantial justice.[3] Statutes are the creatures of the Legislature and the Legislature is presumed to be consistent with itself throughout the statute and where it has assigned one meaning to the language in one part the same may reasonably be supposed to be its meaning in the rest of the statute also, unless there is clear language to the contrary.[4]

2. **Illustrations of application in Indian Courts.**— Thus where the object of the Religious Endowments Act (1863) was described as the enabling of the Government to divest of the management of Religious Endowments and to relieve the Board of Revenue from the duties imposed upon it by Regulation XIX of 1810 of the Bengal Code and Regulation VII of 1817 of Madras Code which referred only to mosques, temples, colleges and religious establishments to which were attached rents and produce of land for their support and in S. 14 of the same Act there was no qualification attached to the said institutions, it was held the latter section should be read so as to harmonize with the clearly expressed object of the statute and could refer only to

(2) *River Wear Commissioners* v. *Adamson*, (1877) 2 A.C. 743 and *Easter Co.* v. *Comptroller of Patents*, (1898) A.C. 576, quoted in *Aghore Chandra* v. *Rajnandini*, 1933 C. 283.

(3) *Someshwar Raja Ram* v. *Manilal Bhailal*, 34 Bom.L.R. 301= 1932 B. 210.

(4) *Omrar Tyab* v. *Ismail Tyab*, 1928 B. 69.

endowed institutions.[5] S. 75 (2) of the Provincial Insolvency Act does not allow a second appeal against the appellate order of the District Court passed in appeal from an order made by a Sub-Court on a matter specified in Schedule I; in such a case the order cannot be treated to come under S. 4 of the Act so as to enable a second appeal being filed, as such a procedure would render S. 75 (2) and its plain proviso meaningless and as an Act should be construed consistently with itself if possible.[6] In another case arising under the Agra Tenancy Act (III of 1926) where Ss. 44 and 273 of the Act appeared to lead to contrary results the Court reconciled the conflict by holding that S. 44 gave an option to the landholder to file a suit for ejectment against a trespaser either in a Civil or Revenue Court.[7] Where S. 212 of the Indian Succession Act prohibits the establishment of the right to any property of a person who had died intestate without securing letters of administration by a competent Court and where S. 304 of the same Act provides that where a person has intermeddled with the estate he is answerable to the executor or administrator or to any creditor or legatee to the extent of the assets that may come into his hands, it was held that S. 304 must be read as a proviso to S. 212 as that would be the only method of reconciling the two provisions.[8] The word 'building' in S. 197, sub-S. (1) of British Columbia Municipal Act of

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(5) *Kedar Nath* v. *Peary Lal*, 9 O.W.N. 229=1932 Oudh 152 (F.B.).

(6) *Kidambi Sambamurti Iyer* v. *E. Ramakrishna Iyer and others* 1929 Mad. 43=55 M.L.J. 837=52 M. 337.

(7) *Debi Sahai* v. *Daulat*, 1927 A. 346.

(8) *Ratan Bhai Karsetji Sunavala and others* v. *Narayana Das Prayagdas and others*, 51 Bom. 771=29 Bom.L.R. 900=1927 B. 474.

1914 includes the ground on which it stands and not merely the fabric without the ground.[9] On similar grounds the word 'appeal' in *P.P.P. Chidambara Nadar* v. *C. P. A. Rama Nadar and others*[10] and the words, '*Acting Advocate-General*' in *In Re* Pre-audience of the Advocate-General[11] were given a wide meaning so as to make them consistent with the rest of the Acts in which they occurred. It was held that the provisions of Order 7, Rule 11, C.P.C., enjoining the rejection of a plaint when the plaintiff is not prepared to pay the proper court-fee must be read consistently with the powers possessed by the Court under Order 33.[12] The expression 'intangible thing' in S. 54 of the Transfer of Property Act cannot be held applicable to simple decrees for money or decrees for possession of immovable property and having regard to the context in which it is used and with due regard to Order 21, Rule 16, C. P. C., which only speaks of the necessity of the transfer of a decree being in writing, such an assignment must be held not to require to be registered as that was the only way of producing harmony and preventing discord between the two statutes.[13] Justice Sundara Aiyar held that S. 423, sub-S. 4 of the Criminal Procedure Code, giving power to the High Court, sitting as an appellate Court against a conviction, to alter the finding in the lower Court and S. 439 giving power to

(9) *Corporation of the City of Victoria* v. *Bishop of Vancouvar Island*, 1921 P.C. 240.

(10) (1937) 1 M.L.J. 453=I.L.R. (1937) Mad. 616=1937 M. 385 (F.B.).

(11) In re *Pre-audience of the Advocate-General*, 1932 B. 71=33 Bom.L.R. 1500 (F.B.).

(12) *Neelikandi* v. *Kunhayissa*, 1936 M. 158=43 L.W. 380.

(13) *Shri Thakurji* v. *Dwarika Ram*, 1935 Pat. 492=158 I.C. 276.

the same Court to enhance the sentence so as to make it appropriate to the altered finding should be reconciled with sub-S. 4 of S. 439 which disables a High Court from converting a finding of acquittal into one of conviction by restricting the latter to cases of complete acquittal only.[14] In a case arising under the Madras Estates Land Act where the question arose as to whether the words 'at the time of letting' occurring in S. 3, Cl. (7), sub-Cl. (1) referred to the letting of the defendant in question, or to the original letting (or the letting for the first time), the Madras High Court construed the definition of 'old waste' in that sub-section as meaning the former as they felt that was the only way, of giving a consistent meaning to the different parts of the statute. Justice Wallace pointed out in the same case that the Act speaks of admission of ryots where occupancy rights are created and of letting to tenants where they are not.[15] In a very recent case the rule as to harmonizing the different parts of a statute was applied to the Co-operative Societies Act it being held that the words 'past-member' occurring in S. 42 (2) (*b*) of the Co-operative Societies Act, 1912 means a past-member liable for debts under S. 23 of the Act as a reading of all the parts of the Act without taking a detached meaning of that word led to that conclusion.[16]

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(14) In re *K. Bali Reddi and four others*, 37 M. 119.

(15) *Sunkara Venkataratnam* v. *Sri Raja Varadaraja Apparao*, 40 M. 529.

(16) *Hassan Mahammed* v. *Co-operative Credit Society of Jurian*, 1937 Lah. 912.

CHAPTER IV.

Rule against Inconvenience, Unreasonableness, Injustice and Absurdity.

1. Reasonable and wholesome interpretation to be preferred—Blackstone on the rule.—The golden rule of construction already alluded to and the several leading cases following that rule have always qualified it by adding a proviso that the interpretation should be such as not to lead to injustice, absurdity, inconvenience or unreasonableness if such an interpretation is by any means possible. The grammatical or the literal sense it has been said, should be modified, extended, or abridged, to avoid such inconvenience and no further.[1] This is strictly conditioned however, by there being an ambiguity or obscurity in the language or its being capable of bearing more than one interpretation. Blackstone in his commentaries gives forceful expression to this when he says, 'if Parliament will positively enact a thing to be done which is unreasonable, I know of no power in the ordinary forms of the constitution that is vested with authority to control it; and the examples usually alleged in support of this sense of the rule do none of them prove that where the main object of a statute is unreasonable the Judges are at liberty to reject it, for that were to set the judicial power above that of the Legislature, which would be subversive of all government. But where some collateral matter arises out of the general words, and happens to be unreasonable, there the Judges are in decency to conclude that

(1) *Warburton* v. *Love Land*, (1828) 1 Hudson and B. Irish Cases 623 at 648.

this consequence was not foreseen by the Parliament and therefore they are at liberty to expound the statute by equity and only *quod hoc* disregard it.[2] If the language employed admits of two constructions one of which renders the meaning absurd and mischievous and the other reasonable and wholesome the latter ought undoubtedly to be preferred.[3] The same would be the case where impossibility would be the consequence of a literal construction.[4] Where the language used is of a generic or general character and can be applied to more than one set of things it is the duty of Court to so construe the general term as will not produce a manifest absurdity or inconvenience.[5] A construction from which one's judgment recoils cannot be a true construction of a statute.[6] By some improper use of the language it might be possible to construe a statute so as to lead to a mischievous result but the interpretations should always be made so as to carry out the object of the Legislature where the language can be so interpreted.[7] As was pointed out in a Rangoon case it is a well-settled maxim in the construction of statutes that all statutory provisions should be so construed as not to lead to inconvenience as there is a presumption that the Legislature could not have intended anything inconvenient or unreasonable.[8] Where the language is not unequivocal and more than one

(2) 1 Bl. Com., p. 91.

(3) *Reg.* v. *Skeen*, (1859) 28 L.J.M.C. 91 at 84.

(4) Ex parte *The Vicar of St. Sepulcheris*, (1864) 33 L.J.Ch. 372 at 375.

(5) *Yates* v. *Reg*, (1885) 14 Q.B.D. 648.

(6) *Reg.* v. *Clarence*, (1888) 22 Q.B.D. 23 at 65.

(7) *Lock* v. *Queensland Investment and Land Mortgage Co.*, (1896) A.C. 461 to 467, *per* Lord Halsbury, L.C.

(8) *Manjeebhai Khataw and Co.* v. *Jamlal Brothers and Co., Ltd.*, 1927 R. 306.

interpretation is possible that which accords with reason, convenience and justice should be preferred.[8-a]

2. **Illustrations.**—In *Simhadri Venkatnarasayya* v. *Official Receiver, Godavari,*[9] which arose under the Provincial Insolvency Act before Act (X of 1930) there were two alternative constructions open, *viz.,* to read S. 53 of the Provincial Insolvency Act along with S. 28 (7) of the same Act which declared that an act of adjudication shall relate back to and take effect from the date of the presentation of the petition on which it is made or to read it separately and by itself, or with reference to the succeeding S. 54. The mortgage deed that was attacked in the case was executed on the 26th July, 1920, the application for adjudication was made on 25th April, 1922, and the adjudication itself was actually made on 24th October, 1922. The relief intended to be given to creditors would not be open to them if the exclusive construction were to be resorted to while reading it jointly with the other provisions of the Act would afford them the necessary relief. It was pointed out by the Madras High Court relying on its own former decisions and the views of the Calcutta and Allahabad High Courts that the critical date from which time should be counted was the date of the filing of the application and not of the actual adjudication as the latter depended largely on accidental circumstances which had no logical connection with the conduct of the debtor up to the time his affairs passed into the hands of the Insolvency Court. It was pointed out that this was a case of doubt where two alternative constructions were possible and that which led to more undesirable and

(8-a) *Parmanand* v. *Emperor,* 1939 Lah. 81 (F.B.).

(9) 1927 M. 826 (2)=53 M.L.J. 136.

anomalous results was rejected and recourse taken to the more reasonable and convenient interpretation.[10] The Legislature has since clarified the position (by inserting the words 'on a petition presented' in S. 53 so as to avoid the ambiguity) by the Amending Act (X of 1930). In another case[11] arising in the same High Court their Lordships had to consider the effect of S. 80 of the C. P. C. on suits for injunction to restrain a threatened injury by a public servant. The suit was to restrain the Official Receiver who was undoubtedly a 'public servant' within the meaning of S. 80, C. P. C., from selling properties belonging to the plaintiff and the prayer was for a permanent injunction against the public servant from so selling. The decision turned upon the true interpretation of the words 'act purporting to be done'. Justice Ramesam (as Sir V. Ramesam then was) was of opinion that as a matter of ordinary idiom the words 'act purporting to be done' would ordinarily refer to past acts only and not to future acts unless the context extended the meaning to future acts also and that the suit being in respect of an act threatened to be done in the future the section did not apply. Justice Reilly after discussing threadbare the grammatical possibilities of the language employed in S. 80 concludes the matter thus, 'can we suppose that the Legislature intended to deprive a private party of a remedy against a public officer which can be enforced against another private party or to expose a private party to the risk of irreparable damage at the hands of

(10) *Simhadri Venkatanarasayya* v. *Official Receiver, Godavari*, 1927 M. 826 (2)=53 M.L.J. 156.

(11) *K. R. Muthu A. R. Arunachalam Chetty* v. *David, Esq., the Official Receiver*, 1927 M. 166=51 M.L.J. 671=50 M. 239.

a public officer though means are provided for guarding against such damage at the hands of another private party? Can we suppose that the Legislature having provided the Courts with the weapon of a temporary injunction for the protection of private rights intended to tie the hands of Courts for two months before that weapon may be used against a public officer? This last suggestion at least we cannot accept lightly. It is a well-established *rule that when a provision of a statute is susceptible of two interpretations, and one of them leads to a manifest absurdity or to a clear risk of injustice and the other leads to no such consequences, the second interpretation must be adopted.'* For similar reasons the said Court when it was faced with two alternative constructions both of which were possible chose one that did not lead to an absurdity and one most in accordance with the intention of the Legislature as could be gathered from the provisions of the C.P.C. read as a whole, and it accordingly held that Order 30, Rule 4, C.P.C., applied to suits which not only might have been but were as a matter of fact instituted in the name of a firm but did not apply to suits instituted in the names of individual partners.[12] In another Nagpur case[13] it was held open to the Court to so construe an enactment as to avoid patent injustice with due regard to the presumption that a Court would normally, *i.e.*, except when compelled to do so, avoid inflicting a palpable injustice and that the Courts are bound to place a benevolent construction if that is by any means possible without doing violence to the spirit

(12) (*Vadero*) *Haji Dost Mahammad and another* v. *Mohandas Lal Chand and another*, 1926 Sind 81.

(13) *Baliram Shukul* v. *Mt. Sitabai Shukul*, 1935 Nag. 168.

of the enactment. It was accordingly ruled that Rule 15 of Order 33 should be read in conjunction with Rule 7 and not with Rule 5 as it would be doing violent injustice otherwise.

In *Venkata Rao* v. *Secretary of State*[14] where it was contended before their Lordships of the Privy Council that action would lie for breach of any of the rules including those relating to leave and pension (under S. 96-B of the Government of India Act, 1919) 'manifold' in number and 'most minute in particularity' and all capable of change, the argument was repelled on the ground that the judicial control over government in the most detailed work of managing the services would cause both inconvenience and confusion and that inconvenience though not a 'final' consideration in a matter of construction was certainly worthy of consideration. In a recent Bombay case Beaumont, C.J., pointed out that while the mere personal opinion of a Judge as to the irrational or the unfair character of an enactment was irrelevant protested against the suggestion that a Judge was a mere automaton bound always to give out the primary meaning of the language even in a case where he considered the effect of such a construction led to manifestly unreasonable and unjust results and accordingly held that the Court was entitled and indeed bound to assume that the Legislature could not intend such a construction and to make out a more rational meaning which made the words more sensible.[15]

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(14) (1937) 1 M.L.J. 529=64 I.C. 55=I.L.R. 1937 M. 532 (P.C.). Also *E. T. Rangachari* v. *Secretary of State*, (1937) 1 M.L.J. 515=64 I.A. 40=I.L.R. 1937 M. 517 (P.C.).

(15) *Emperor* v. *Somabhai Govindbhai*, 1938 Bom. 484=40 Bom. L.R. 1082 (F.B.).

CHAPTER V.

Rule against Withdrawal of Old or Conferment of New Jurisdiction.

1. Presumption against change of jurisdiction.—Courts of law have from ancient times been averse to the interference with the existing jurisdiction of Courts and have likewise discouraged the attempt to assume new jurisdiction except when in either case the language compelled them to do so. The Judges have always been known to be conservative and to be fastidious in preserving established laws and usage and to conform to old rules and practice and not to introduce innovations or new rules of practice though tendencies in that direction are not unnoticeable in modern times especially in incompletely codified branches of law like the Hindu Law and usage. It is a sound rule of construction however, that no Judge can take upon himself the province of what properly pertains to the Legislature or arrogate to himself authority or power which the Legislature does not confer on him in the clearest language.

2. Clear language essential to withdraw existing jurisdiction.—The general presumption is against the construction of a statute which would oust or restrict the jurisdiction of a Court unless the intention is expressed in the clearest terms or has to be necessarily implied. As stated in one of the English cases 'the general rights of the Queen's subjects are not to be hastily assumed to be interfered with and taken away by Act of Parliament' and where the language is doubt-

ful they should be strictly construed taking care always to preserve the existing jurisdiction of Courts.[1] It was further held that a construction was to be avoided which would operate to deprive a subject of his freehold or common law right or to the creating of an arbitrary procedure. An existing jurisdiction can be taken away only by the use of precise and distinct words and if the ordinary law of the land has to be altered it must be by the use of equally precise and definite language.[2] Or as Lord Halsbury put it forcefully in one of the cases 'If you want to alter the law which has lasted for centuries, to suggest that that is to be dealt with by inference and that you should introduce a new system of law without specific enactment of it, seems to be perfectly monstrous.'

3. Indian decisions leaning against ouster of jurisdiction.—The Indian High Courts have approved of the above principles and have laid down in the clearest terms that an interpretation seeking to oust the ordinary jurisdiction of Courts should receive a strict interpretation[3] and that where the language is doubtful Courts should lean against an ouster of jurisdiction of the ordinary tribunals of the land.[4] The Legislature does not intend to make a substantial alteration in the law beyond what it clearly declares in express or necessarily implied terms nor beyond the immediate scope

(1) *Jacob* v. *Brett*, (1875) L.R. 20 Eq. 1 quoted with approval in 1939 C. 435 at 446 (F.B.).

(2) *Galsworthy* v. *Durrant*, (1860) 2 L.T. 788; see also *Albon* v. *Pyke*, (1842) 11 L.J.C.P. 266=2 Scott (N.R.) 241=4 M. & G. 421=134 E.R. 172.

(3) *Ali Muhammad* v. *Hakim*, 9 Lah. 504=1928 Lah. 121 (F.B.) following *Leach* v. *Rex.*, 1912 A.C. 305. Also *Prosunno Coomar Paul Chowdhry* v. *Koylash Chunder Paul Chowdhry*, 8 W.R. 428 (F.B.).

(4) *Ali Muhammad* v. *Hakim*, 9 Lah. 504=1928 Lah. 121 (F.B.).

and object of any statute and an intention to cut down or abolish the existing rights must be clear and manifest.[5] Civil Courts are *prima facie* entitled to adjudicate on all civil matters and legislation that ousts their jurisdiction should be carefully examined and unless the civil Courts themselves are satisfied that their jurisdiction is barred they will not deny jurisdiction to those that seek their aid. They will not accept the mere *ipsi dixit* of the authority attempting to oust their jurisdiction without their being clearly satisfied of the same and the law definitely enjoining their non-interference.[6] Under S. 9 of the Civil Procedure Code the jurisdiction of civil Courts is declared to be universal except in the case of suits the cognizance of which is expressly or impliedly barred and it is on those who deny the jurisdiction of a civil Court to allege and prove facts which exclude such jurisdiction. It was thus pointed out in a recent Lahore case that the vested rights in a Court cannot be curtailed or circumscribed by any limits by speculations or even interferences depending on individual inclination and the only way that could be done was by the employment of unequivocal language to that effect. The right of the civil Court acting under S. 16 (2) of the Punjab Alienation of Land Act (XIII of 1900) was not in any way restricted or curtailed on account of provisions of S. 12 of the same Act and the civil Court could accordingly exercise its fullest power under S. 16 notwithstanding anything the owner of the land might do under S. 12. To hold otherwise would open the door to fraud and abuses of the worst kind and would successfully permit the owner to

(5) *Khuda Bux* v. *Panjo*, 1930 S. 265 (F.B.).

(6) *M. G. Ba Lab* v. *K. T. Co-operative Society*, 1933 R. 124.

deprive his creditors of the only method open to them of realizing their dues from him.[7]

4. Jurisdiction of Civil Courts to interfere with arbitrary proceedings of local bodies.—The question whether the jurisdiction of a civil Court is barred or still inheres in it often assumes importance in the case of suits filed questioning acts done by local authorities or special tribunals created under special statutes which are declared by the statutes to be final so long as the formalities enjoined by those statutes are substantially complied with. The use of the word 'final' in Rule 28 of Sch. IV (Taxation and Finance) of the Madras Dt. Municipalities Act was held by the Madras High Court to refer to the proceedings before the Municipality and was not intended to shut out the jurisdiction of civil Courts.[8] Following the same principle Justice Venkatasubba Rao ordered refund of profession-tax levied from the shareholder of a company in regard to the dividends received by him after the company of which he was a shareholder had been assessed to companies' tax as such a levy was contrary to the terms of the same Municipal Act.[9] Similarly civil Courts assumed inherent jurisdiction to set aside the imposition of a licence fee where they found that it was unduly excessive and out of proportion to the trouble and expense taken by the Corporation in issuing licences and controlling trades as the levy was not according to the

(7) *Deputy Commissioner, Jhang* v. *Bhuduram and others*, 1937 Lah. 38 (F.B.).

(8) *Valli Ammal* v. *The Corporation of Madras*, 38 M. 41=23 M. L.J. 531.

(9) *Sri Raja Malraj Venkata Narasimharao Bahadur* v. *Chairman, Municipal Council, Narasaraopet*, 68 M.L.J. 162=58 M. 949=1935 M. 298 (2).

spirit of the Act.[10] A licence fee of Rs. 100 for an inoffensive article like ground-nut was considered unfair discriminatory and opposed both to the letter and spirit of the Municipal Act.[11] An arbitrary assessment by a local body can always be challenged in a civil Court where such arbitrariness is established[12] and generally speaking all assessments which are partial, unequal, discriminatory and oppressive and tend to gratuitously interfere with the rights of a subject.[13] The proviso "except as provided by this Act" occurring in S. 73 of the Madras Hindu Religious Endowments Act which was capable of two constructions was given the less natural meaning of "contrary to the provisions of this Act" as that was the only construction which avoided the contingency of the jurisdiction of civil Courts being excluded altogether in a matter of greatest importance to a private individual in establishing his private rights.[14]

Statutes which contain provisions which declare decisions passed thereunder to be 'final' have often raised difficulties as to whether they are really and truly 'final' so as to oust the jurisdiction of the civil Courts or should be deemed to be final only so far as the special Act or provision therein is concerned and as not affecting the general right of civil Courts to interfere in such matters Justice (now Sir) Varadachariar

(10) *Corporation of Madras* v. *Messrs. Spencer & Co.*, 57 M.L.J. 71=1930 M. 55=52 M. 764.

(11) *Municipal Council, Kumbakonam* v. *Messrs. Rally Bros.*, 61 M.L.J. 748, following *Kruse* v. *Johnson*, (1898) 2 Q.B. 91.

(12) *Municipal Board of Tezpur* v. *Abdul Hamid*, 40 C.W.N. 337.

(13) *Cruse* v. *Johnson*, (1898) 2 Q.B. 91.

(14) *Vythilinga Pandarasannadhi* v. *Temple Committee*, 1931 M. 801=54 M. 1011=61 M.L.J. 815.

has indicated the principles by which the distinctio ought to be made in *Kamaraju Pandiya Naicker* v. *Th Secretary of State for India in Council*[15] Statutes whic attach finality to orders passed thereunder preclud obviously further appeal to the authorities under th statute itself. Whether they intend to go further an oust the jurisdiction of civil Courts depends not on th mere language in such statutes but on the genera scheme of the legislation in question. The genera rule appears to be that if a person's liberty or property is interfered with under the powers conferred by th statute, a cause of action lies in a civil Court excep where such a right is expressly or by necessary impli cation taken away by the statute. Where there is nc infringement of a common law right no question of ouster of jurisdiction of the civil Court arises for there can be no ouster where there is *prima facie* no jurisdiction. This is particularly true of cases where the right or status itself is created by statute. As the learned Judge points out the negative character of the phraseology adopted by the Legislature as in the Local Boards Act and District Municipalities Act and the Revenue Recovery Act is an indication that redress can always be sought in a civil Court except where it is barred in the clearest terms. It was thus held that a suit lay for a declaration that the Collector proceeded on a wrong basis in the calculation of the land-cess payable by the Zemindar though S. 86 of the Madras Local Boards Act (under which the cess was levied) declares the decision of the Board of Revenue 'final'

(15) *Kamaraju Pandiya Naicker* v. *Secretary of State*, 69 M.L.J. 695; see also *Secretary of State* v. *Meyyappa Chettiar*, 1937 M. 241 =1936 M.W.N. 1056.

in the matter, as that 'finality' only applies to further appeals to the statutory authorities but does not oust the jurisdiction of civil Courts. Justice Wadsworth relying on the same principles came to a contrary conclusion in *Ramanatha* v. *Arunachalam*[16] where he held that S. 73 of the Madras Hindu Religious Endowments Act (II of 1927) indicated that the special machinery of appeal set up under S. 43 of the Act conferring finality on the appellate decisions passed in appeals by dismissed village officers was intended to oust the jurisdiction of civil Courts to question the propriety of such orders. To the same effect was the judgment in *Khan Bahadur H. M. and D. H. Bhiwandiwalla and Co.* v. *Secretary of State*[17] which was a case under the Sea Customs Act. Referring to S. 188 of that Act which made every order passed in appeal under that section final subject to revision under S. 191, Justice Gentle observed that when a statute has provided a remedy for a wrong, that remedy should be followed and recourse to civil Courts is not permissible as the remedy given by the Act amounts to an ouster of jurisdiction of civil Courts. His Lordship distinguished the case from others where the civil Courts' jurisdiction was preserved by the observation that there was no proviso (in the Sea Customs Act) enjoining the fulfilment of the requirements of the Act which found a place in the other Acts.

Where the proviso to S. 67-B (2) of the Government of India Act, 1919, enacted that any Act made by Governor-General was to come into operation

(16) 1938 Mad. 972.
(17) 1937 M. 536.

immediately, if in his opinion an emergency exist which justified such action and where he exercised h powers under that proviso, no other tribunal could s in judgment over the exercise of his discretion decide whether his opinion was correct or no.[18]

5. Civil Courts to interfere where fundamental righ are violated.—Where the fundamental rules for resum tion were not strictly followed the proceedings of th assessing authorities were held subject to being quashe in an ordinary civil Court.[19] In another case it wa held that the optional right given by a statute to go t a special tribunal did not exclude the jurisdiction civil Courts for it was pointed out that to hold the con trary would be a dangerous and an alarmin proposition.[20]

6. Special Tribunals to observe rules strictly and d natural justice.—In Bombay the rule was laid down tha the presumption in the matter of jurisdiction wa in favour of giving jurisdiction to the highest Courts an a rule encroaching on such jurisdiction should be con strued strictly.[21] In another case it was held tha where the confiscatory rights of a special tribuna whose adjudication was declared to be final under th provisions of a special Act were involved the Govern ment could not have immunity from the civil Courts an at the same time disregard the provisions of the Se Customs Act under which the tribunal was formed. I the Special Tribunal has operated it was said to b

(18) In re *Swami Arunagirinatha*, 1939 M. 21.
(19) *Mahabunnessa* v. *Secretary of State*, 1926 C. 1064=53 C. 561
(20) *Sasibhushan Hazra* v. *Sheik Isabarali Nazir*, 19 C.W.N. 636
(21) *Ghulamhusain* v. *D'Souza*, 53 B. 819=1929 B. 471.

well and good. But if there has in fact not been a decision by such a tribunal arrived at in the manner provided in the Act then the tribunal has not operated and the bar to a suit does not exist. A real adjudication by the special tribunal is necessary.[22] The test in all such cases has been held to be whether the tribunal has ascertained the facts and the law and has acted fairly and in good faith after listening to both sides.[23] As enunciated by Viscount Haldane, L. C., in *Local Government Board* v. *Arlidge*[24] "Those whose duty it is to decide must act judicially dealing with the question referred to them without bias giving each of the parties an opportunity of adequately presenting their case. The decision should be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice". It should act honestly and by honest means reach just ends. Where there is no express guidance it should devise methods of judicial procedure not necessarily those of the Courts of justice but those which conduce under all circumstances to natural justice. Where such adjudication is wanting on the part of special tribunals the inherent jurisdiction of civil Courts is not barred but revives into play.

7. Jurisdiction of revenue Courts to be limited to cases specified by statute.—Section 77 (3) of the Punjab Tenancy Act which enjoins a civil Court to return a plaint where it discovers in the course of the trial of

(22) *Ganesh Mahadev* v. *Secretary of State for India*, 43 B. 221.

(23) *Per* Lord Loreburn, L.C., in *Board of Education* v. *Rice*, (1911) A.C. 179.

(24) (1915) A. C. 120.

a suit that it has to determine a matter which can tried only by a revenue Court, should be strictly co strued as it seeks to oust the jurisdiction of a civil Cou and it was held that it was not the mere raising of th plea that would oust its jurisdiction but the establishin that the decision of such an issue is necessary for th decision of such a suit.[25] Again S. 32 of the Punja Colonization of Government Lands Act (1912) whic enables the Collector to re-enter upon the land an 'resume' possession on behalf of the Governmen applies only to those cases where the Government is entitled to the possession of the land where a trespasser has interfered with that possession, and there was nothing to warrant the intervention of the Collector in a dispute between private persons or to debar the civil Courts from adjudicating such suits.[1]

8. **Jurisdiction not to be enlarged without clear Authority.**—Where under the Succession Certificate Act (VII of 1889) a District Court would have jurisdiction only if the petitioner ordinarily resides within the territorial limits of the Court or had property within such limits, in a case where he had no fixed place of residence it was held that the provision granting jurisdiction must be strictly construed and should not be interpreted so as to either enlarge the jurisiction or to restrict it.[2] When a liquidator sought the assistance of the Court in regard to orders over which no appeal or revision to the civil Court was provided, it was held the

(25) *Cheta* v. *Baija and others*, 9 L. 38=1927 L. 452 (F.B.).

(1) *Ali Mahammad* v. *Hakim and others*, 1928 L. 121=9 L. 504 (F.B.).

(2) *Chan Pyn* v. *Chan Chor Khine*, 1923 R. 238.

civil Court had jurisdiction to determine whether the orders passed by the liquidator were competent or no.[3] S. 258 of the Chota Nagpur Tenancy Act is no bar to a suit by one set of tenants against another set of tenants to recover possession of lands as S. 130 of the Act to which the former has reference refers only to proceedings between a landlord and a tenant.[4] It was pointed out that civil Courts should be particularly on their guard so as to see that their jurisdiction was in no way ousted except when the language strictly warranted it. The Federal Court of India has on similar grounds refused to revise an order of the High Court holding that a Court could not by the exercise of inherent powers extend its appellate jurisdiction or increase its revisional authority over subordinate Courts.[5]

9. The appointment as an Additional District Judge under S. 26 (1) of the Central Provinces Courts Act cannot be implied from an appointment as an Insolvency Judge under the Insolvency Act as the provisions of an Act conferring jurisdiction for a particular purpose could not by implication affect or modify the provisions of an Act creating a status for general purposes.[6] There was nothing in the Sind Encumbered Estates Act (S. 5) which put it in the power of a debtor to oust the jurisdiction of a Court by applying for protection under the Act at a late stage of the proceedings after the property has been sold out and

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(3) *M. G. Ba Lab* v. *K. T. Co-operative Society*, 1933 R. 124.

(4) *Shaiba Prasad Manjhi* v. *Golam Manjhi*, 50 I.C. 454.

(5) *Pasupathi Bharati* v. *Secretary of State and another*, 1938 F. C. 1.

(6) *Madha Rao Deo Rao* v. *Nago and others*, 1923 N. 80.

create a chaos to the serious prejudice of both t auction-purchaser and the judgment-creditor.[7]

10. Jurisdiction not to be usurped.—If Courts a reluctant to part with any part of the jurisdiction i hering in them equally reluctant would they be to usu a jurisdiction which is not legitimately theirs and th presumption in all cases is that a Court cannot assum jurisdiction which is not conferred upon it by expres and clear language.

In *Shanta Nand* v. *Basudevanand*[8] a majority o the Full Bench differing from the view expressed by the Chief Justice held that the inherent powers of the Supreme Court of Calcutta were not conferred by the Indian High Courts Act of 1861 and that the High Court accordingly had no jurisdiction over legal practitioners in regard to their professional or other misconduct except such as was conferred upon it by the Legal Practitioners Act and the Bar Councils Act and no costs could be recovered from a vakil except as provided for in S. 35, Civil Procedure Code. The case arose out of the application filed by an advocate for attachment of the money deposited by a party in the High Court (as security for appeal to the Privy Council) which the High Court held to be reprehensible. Again a Full Bench decision of the Patna High Court[9] held that when an enactment stated that no suit should lie in any civil Court it meant that no suit lay on any ground whatsoever including the ground of fraud. The reason for the rule was stated to be that in such cases the object of the Legis-

(7) *Shewakram* v. *Gundmonal*, 1927 S. 225.
(8) 52 A. 619=1930 A. 225 (F.B.).
(9) *Harekrishna Sen* v. *Umesh Chandra Dutt*, 6 P.L.J. 373=62 I. C. 962=1921 Pat. 193 (F.B.).

lature was that questions relating to the right of tenants in backward tracts such as the Santhal Parganas should be decided by officers who have better knowledge of the people and with a greater speed and finality than usually attaches to civil Courts. So far as the question of fraud is concerned, which has been held to vitiate the most solemn of transactions the authority of the decision may be open to question but on other grounds it lays the general law as to the disinclination of correct interpretation to allow a Court a jurisdiction which it does not clearly possess. In *Khuda Bux* v. *Panjo*[10] the matter was clearly stated by the observation that it was no doubt the characteristic of a good judge to amplify his jurisdiction where the words of a statute allowed it but that a good judge would become a bad citizen if he attempted only to snatch jurisdiction by a strained interpretation of the law.

11. New Jurisdiction carries new right.—Where a new jurisdiction is conferred on a Court however as a matter of fact it impliedly grants the Court on which the jurisdiction is conferred powers to do such acts and adopt such measures and means as may be necessary for the proper execution of the same.[11] As Viscount Haldane put it when a question is referred to an established Court without any more qualification, the ordinary incidents and procedure of that Court including a right of appeal attach to the same.[12] A Court which acquires a new jurisdiction acquires with it all the

(10) 1930 Sind 265 (F.B.).

(11) *Yasinali Mirdha* v. *Radha Govind Chaudhuri*, 47 Cal. 354 at 364=1922 Cal. 118.

(12) *National Telephone Co., Ltd.* v. *Post-Master General*, (1913) A.C. 546=82 L.J.K.B. 1197.

necessary consequences that flow therefrom. Sectio 70 of the Madras Hindu Religious Endowments Ac which empowers a District Court to order delivery o properties empowers it also to remove obstruction an enforce its order of delivery.[13] On similar grounds i was held that subject to Ss. 109 and 110 of the Civi Procedure Code there is a right of appeal to the Privy Council against the decision of the High Court in a matter referred to it for its decision under S. 51 of the Indian Income-Tax Act.[14]

(13) *Narayana Iyengar* v. *Desikachariar*, 65 M.L.J. 315=1933 M. 689=57 M. 35.

(14) *The Secretary, Board of Revenue (Income-tax), Madras* v. *The Madras Export Co.*, 18 L.W. 392=1924 M. 63.

CHAPTER VI.

Rule against Conflict with International Law.

1. What is International Law.—Viscount Sankey has ably summed up the real nature and the full content of what is known as International law in a recent case reported in In re *The Piracy Jure Gentium.*[1] The learned Judge observes that International law is derived from treaties between various states, the Municipal Acts of Parliament, the decisions of Municipal Courts and above all on the opinions of *juris consults* and text book writers on the subject. His Lordship further remarks in the same case, 'It is a process of inductive reasoning . . . . . In the strict sense International law has still no Legislature, no executive, and no judiciary though in a certain sense there is now an International judiciary in the Hague Tribunal and attempts are being made by the League of Nations to draw up Codes of International law. In embarking on international law one is in the realm of opinion'. It is a body of opinion which has not yet crystallized into any definite shape but is 'a living and expanding Code' becoming more and more solid with the advance of each century and extending its sphere of operation and influence, *e.g.*, during the last few years a large body of international law has grown up dealing with aerial warfare and aerial transport. In seeking to understand what is the most authoritative position in International law on any point it is permissible to attach value to a prevalent consensus of views or to pick and select the better views. International law has no

(1) 1934 P.C. 220=40 L.W. 444.

means of trying or punishing crimes committed agains it, such punishment being left entirely to the provinc of Municipal law.

2. **Conflict with International Law to be avoided** —It has long been a well-recognized principle in the interpretation of statutes that every enactment so far as its language permits should be so construed as not to be inconsistent or in conflict with the law of Nations or as is generally stated with the comity of nations and established rules of International law. If the language is irresistibly clear or unmistakably plain it is the duty of Courts to give effect to it notwithstanding that it does not harmonize with International law but in all other cases where it is possible to interpret the same without offending established rules of the law governing nations *inter se*, it is always the practice to interpret them so as to be in consonance with the same.[2] Statutes are *prima facie* territorial and *prima facie* apply to and govern the subjects residing within the territorial limits to which they relate *extra territorium jus dicenti impune non paretur*.[3] The Legislature has power to pass laws controlling primarily its own subjects, natural born or resident whether temporarily residing or permanently domiciled and its laws should be construed as having been passed for the benefit of subjects owing allegiance to the laws and whose interests the Legislature is under an obligation to protect.[4] No tax or duty

(2) *Venkatalutchmi Ammal* v. *Srirangapatnam Srinivasamurthy*, 11 M.L.J. 91, relying on *St. Gobain Chauny Cirey Company* v. *Hoyermann's Agency*, (1893) 2 Q. B. 96.

(3) The sentence of one adjudicating beyond his territory cannot be obeyed with impunity—Wharton's Lexicon.

(4) *Jeffreys* v. *Boosey*, (1854) 4 H.L. Cas. 815 at 926=10 E.R. 681.

can therefore be imposed on aliens who also reside abroad as ordinarily speaking the power of a country ends with legislating for its own subjects all over the world and foreigners within its jurisdiction and no further.[5] It by no means follows that where the Legislature intends to legislate and legislates in regard to foreigners out of its jurisdiction the judiciary can refuse to execute the orders or decrees of the Legislature.[6] Thus in *E. R. Croft* v. *Sylvester Dumphy*[7] their Lordships of the Privy Council while unwilling to pronounce upon the actual distance seaward up to which a state could extend its jurisdiction held that it had long been recognized that for certain purposes 'notably those of police, revenue, public health, and fisheries' it could enact laws affecting the seas surrounding its coast seaward to a distance exceeding the normal limits of its territories. It was thus held in the above case that the Dominion Parliament of Canada could legislate for the seizure of a vessel registered in Canada for a distance of 12 miles from the sea coast of that Dominion. Their Lordships further say that when once it is a topic of legislation within the competence of the Dominion Legislature, *e.g.*, one pertaining to the peace, order and good government of Canada or within the list mentioned in S. 91 of the British North America Act it is binding on the Courts of that Dominion and can be enforced therein even though contrary to the principles of International law as Imperial legislation was binding on the Courts and could not be challenged as *ultra*

(5) *Cope* v. *Doherty*, (1858) 4 K. & J. 367 at 375=27 L.J. Ch. 600.
(6) *The Amalia*, (1863) 32 L.J. Ad. 191 at 193.
(7) 1933 P.C. 16=37 L.W. 528=143 I.C. 91.

vires.[7-a] Only if it is possible consistently with the ordinary canons of construction to come to a different conclusion a conclusion consistent with international law should be resorted to.[8] The reason for the rule is that a sovereign power is always presumed to respect the subjects and the rights of all other sovereign powers outside its territory.[9]

3. People outside Jurisdiction of Civil Courts.—Amongst people over whom ordinary civil Courts have no jurisdiction according to International law may be mentioned foreign sovereigns, ambassadors, a foreign army and so on and general words used in the statute of any country are generally restricted so as to exclude them in their interpretation.[10] There are several cases under the English and American law where general words were so restricted so as not to conflict with general principles of international law. In one case an Act of Parliament authorized the seizure and prosecution of all ships engaged in the slave trade but it was held the same could in no way affect the foreigners or their rights accruing under established laws of nations.[11] It was said that the prohibition against slave trade though based on principles of justice, equity and good conscience was intended to be applied to British subjects but could not be enforced against foreigners.[12]

4. Dominions and Colonies.—What applies to sovereign countries applies with equal force to conquer-

(7-a) *Mortensen* v. *Peters*, (1906) 8 F. (J.C.) 93.

(8) *Colquhoun* v. *Brooks*, (1889) 14 App. Cas. 493 at 503 and 504 =59 L.J.Q.B. 53 at 57 and 58.

(9) *Reg.* v. *Jameson*, (1896) 2 Q.B. 425=65 L.J.M.C. 218.

(10) Maxwell: Interpretation of Statutes, Ch. VI, S. 2, p. 127.

(11) Maxwell, 7th Ed., p. 128.

(12) *Ibid.*

ed or settled countries. The Colonial and Indian Legislatures have their powers expressly limited by the Acts of Parliament creating them and are circumscribed so far as their legislative power is concerned within those limits. Within these limits however, they are neither agents nor delegates of Parliament and have plenary powers of legislation as large and extensive as those of the Parliament creating it. The Courts themselves have a right to determine whether the powers so granted by Parliament are exceeded both by the affirmative terms of the Act of Parliament creating them as well as by any restriction arising from necessary implication or by any variation in the Act of Parliament creating the Legislature, and when once the assumption of jurisdiction to legislate is found in favour of the established Legislature the latter has full and uncontrolled power to legislate within those limits.[13] In *Hodge* v. *Reg.*[14] where the contention was raised that the local Legislature of Ontario was in the nature of an agent or delegate and that the local Legislature must exercise its powers itself and cannot delegate them to others on the principle *delegatus non potest delegare* the Judicial Committee of the Privy Council held that the local Legislatures are in no sense delegates or acting under any mandate from Imperial Parliament.

5. **Indian Law.**—In the Indian Law the above had come in for consideration specially in construing clause 12 of the Letters Patent which confers jurisdiction on the High Court only in cases where the defendant at the time of the commencement of the suit 'shall dwell

(13) *The Queen* v. *Burah*, (1878) 3 App. Cas. 889 at 904, 905.
(14) 9 A.C. 117.

or carry on business or personally work for gain' with in the limits of the metropolitan city where the High Court is situated. Where the cause of action for a suit arose out of jurisdiction and the defendant who was a foreigner also lived beyond the jurisdiction of a Court and did not personally work for gain within the territorial limits of the High Court but carried on business through an agent within such jurisdiction did the High Court have jurisdiction or was it deprived of the same? It was originally held by the Bombay High Court in *Kessowji Damodar Jairam* v. *Khimji Jairam*[15] which arose under the Bombay Small Cause Courts Act that *prima facie* Courts exercise jurisdiction over the subjects of a country or the residents therein and that though the language might be broadly worded to include foreign residents, it should not be so interpreted relying mainly upon the judgment in ex parte *Blain*.[16] The view expressed by Scott, J., in the above decision was dissented from in a later decision of the same High Court in *Girdhar Damodar* v. *Kassigar*,[17] wherein Sir Charles Sargent, C. J. and Starling, J., held the language of the statute made it sufficiently clear that the carrying on of business through an agent within the jurisdiction of the High Court was sufficient to confer jurisdiction on the same. As was pointed out in a Madras case,[18] where the enactment itself confers jurisdiction on foreigners there was no need to travel beyond

(15) 12 Bom. 507.

(16) 12 Ch. D. 522=41 L.T. 46=28 W.R. 334.

(17) 17 Bom. 662.

(18) *Janoo Hassan by his agent Ahmed Esa* v. *Batchu Kamandu and another*, 45 M.L.J. 471=1924 M. 158. But see *Annamalai Chetty* v. *Murugesa Chetty*, 26 M. 544=30 I.A. 220=7 C.W.N. 754=13 M. L.J. 287=5 Bom.L.R. 494 (P.C.).

the terms of the statute and import principles of international law into the matter. It was pointed out that cl. 12 of the Letters Patent conferred jurisdiction on three classes of persons and it was impossible to construe 'defendant' to include foreigners in two out of three classes and not in the third when they all occur in the same sentence. English authorities were held to be no certain guide in the matter as the language of the statutes conferring jurisdiction in both cases was widely different and the Supreme Court rules conferring jurisdiction on English Courts differed in substance from the rules of the Indian statutes.

Under the Matrimonial Causes Act, 1857, though the Act does not expressly make 'domicil' the test of jurisdiction, it was applied in a case relating to dissolution of marriage based on practice derived from principles of private international law the object of which was to prevent the scandal that would otherwise follow of a man and woman being man and wife in one country and strangers in another.[19] Justice Martin of the Bombay High Court however, refused in a Full Bench case,[20] to construe the word 'reside' as meaning 'domiciled' in interpreting S. 2 of the Indian Divorce Act, 1869.

6. Right to exercise jurisdiction and validity of such exercise in foreign countries.—A distinction should however be drawn between the right of a Court to exercise jurisdiction and the validity or enforceability in other countries of a decree passed by a Court on subjects or matters beyond the territorial limits of the

(19) *Wilson* v. *Wilson*, L.R. 2 P. and D. 435.
(20) *Wilkinson* v. *Wilkinson*, 1923 B. 321 (F.B.).

Court passing such a decree. A Court may b entitled to exercise jurisdiction over a particular ma ter under the law of the country to which it belongs bu whether it can also be made the foundation of an actio in the Courts of a foreign country is a different matte The only principle of international law which is rele vant in regard to the former question is that where th language permits of more than one construction i should as far as possible be construed so as not to b in conflict with principles of international law; wher however the language cannot be harmonized with suc principles it is nevertheless the duty of Courts to giv effect to the wording of the statute though the tribunal of other countries might refuse to recognize such adju dication or give effect to the same.[21]

7. **(Capacity to give effective judgment—Test of valid Jurisdiction.**—In one case, however, it was held that if a Court has no power to give an effective judgment against a foreigner it cannot properly entertain a claim against him and cannot assume jurisdiction over him.[22] The reasoning of the thing was stated to be that it is a fundamental principle of international jurisprudence that the sovereign of a country acting through the Courts thereof has no jurisdiction over any matter with regard to which he cannot give effective judgment or which he can render effective only by interference with the authority of a foreign sovereign or the jurisdiction of a foreign Court,[23] 'effective

(21) *Venkatalakshmi Ammal* v. *Srirungapatnam Srinivasamurthy*, 11 M.L.J. 91 at 109.

(22) *Doongersi Aichar* v. *Haribhoy Pragji and others*, 1927 Sind 160.

(23) **Dicey, on Conflict of Laws, 3rd Ed., p. 40.**

judgment' being defined as one which a sovereign has authority to enforce against the person bound by it. In the Sind case it was found that any judgment that might be passed would not be effective either as a judgment *in rem* or *in personam* as both the person and property were outside the jurisdiction of the King-Emperor and as he was a resident of Kathiawar and his property also was situated therein.

8. The general rule as regards jurisdiction over foreigners in Indian Law was stated by Lord Selbourne in a Privy Council case that went up from the Calcutta High Court.[24] The general rule underlying all international jurisprudence is that the plaintiff has to follow the Court of the defendant, (*actor sequitur forum rei*) all jurisdiction being properly speaking territorial and attaching to the residents so long as they continue to reside within a territory as also to immovable and movable property within the said territory. In matters relating to status or succession governed by domicile it exists as regards those who are domiciled or who were domiciled during their lives within a territory. 'As between different provinces under one sovereignty . . . . . the legislation of the sovereign may distribute and regulate jurisdiction: but no territorial legislation can give jurisdiction which any foreign Court ought to recognize against foreigners who owe no allegiance or obedience to the power which so legislates.' 'In a personal action to which none of these causes of jurisdiction apply, a decree pronounced *in absentum* by a foreign Court to the jurisdiction of which the defendant

(24) *Gurdyal Sing* v. *Raja of Faridkot*, 21 I.A. 171=22 C. 222 (P.C.). See also *Christien* v. *Delanney*, 26 Cal. 931; *Kassim Mamoojee* v. *Isuf Mahomed Sulliman*, 29 Cal. 509.

has not in any way submitted himself, is by internation law a nullity. He is under no obligation of any kir to obey it, and it must be regarded as a mere nullity, t the Courts of every nation except (when authorised t special local Legislation) in the country of the forum t which it was pronounced'. An *ex parte* decree fc money in the Faridkot State in subordinate allianc with the Government of India against a person wh was for some time an employee, who, at the time th action was brought however, had left it and was dom ciled in another State was held to be null and voi and of no effect in a British Indian Court. In one cas however, where a suit was filed, at Backergange on th strength of an *ex parte* judgment of the Queen's Benc decision of the High Court of Justice of England an where the validity of the decree was attempted to b impugned on the ground that the defendants did no reside within the territorial limits of the English Cour and that the latter had accordingly no jurisdiction ove the subject-matter of the suit, their Lordships of th Calcutta High Court repelled the argument on the ground that the defendants were subjects of the sovereign of both of England and British India and although not resident in England the defendants were residing in British India and the judgment of the English Court was accordingly not a nullity.[25] Subjects of the British Crown are subjects not only to the jurisdiction of Indian Legislative Councils but also the supreme legislative authority of the British Parliament. So far as criminal matters are concerned the principle of International law is that every person in a foreign state is punishable by the laws of that state provided

(25) *Sardar Gurdyal Sing* v. *Raja of Faridkot*, 28 Cal. 641.

those laws are in conformity with 'those sanctions of justice which all civilized nations hold in common' and do not contravene rights acquired by treaty by the country where assistance is sought.[1] In the case of a protecting and a protected country the jurisdiction of Courts to punish criminal offenders depends upon the terms of the treaty or treaties between the two countries.

(1) *Adams* v. *Emperor*, 26 M. 607.

BOOK III.

CHAPTER I.

CONSTRUCTION OF SOME SPECIAL STATUTES.

Construction of Penal Statutes.

1. **Penal Statutes to be construed strictly.**—It is a long accepted rule in the interpretation of penal statutes that they should be construed strictly the rule being based on the solicitude of the law for the liberty of the person and the security of the property of a subject. The rule only means that where there is ambiguity or room for more than one construction such construction should be placed on the language of a penal statute as would be favourable to the accused or the person charged or complained against. Where there are two possible interpretations one of which would mitigate the penalty and the other aggravate it the former should prevail.[1] The law is jealous of the liberty of the subject and Courts should always in cases of doubt lean against any construction of penal law which is oppressive to the subject.[2] As Lord Abinger, C.B., has pointed out in *Henderson* v. *Sherborne*[3] "the principle that a penal law ought to be construed strictly is not only a sound one but the only one consistent with our free institutions. The interpretation of statutes

(1) *Hildesheimer* v. *W. & F. Faulkner, Ltd.*, (1901) 2 Ch. 552=70 L.J.Ch. 800=85 L.T. 322=49 W.R. 708=17 T.L.R. 735 followed in *Emperor* v. *Ahmed*, 1926 S. 273 (F.B.). See also *Nandev Co-operative Agency* v. *Virdharal*, 1937 Bom. 266 at 271.

(2) *Rangachariar* v. *Venkatasami Chetty*, 40 M.L.W. 834=67 M.L.J. 873.

(3) 150 E.R. 743=(1836) 2 M. & W. 236 at 239.

has always in modern times been highly favourable to the personal liberty of the subject."[4] As Justice Cunliffe has pointed out in *Netai Chandra Jana and others* v. *Emperor*[5] in a country where there is no major Act such as the *habeas corpus* on the statute book statutes which curtail personal liberty ought to be construed with more than usual strictness. The primary object of all interpretation being the promotion of the object of the statute and to give effect to its real intent its words should be so interpreted so as to effectuate that intention. A plain and a reasonable interpretation as opposed to a far fetched or strained meaning is to be preferred so as in no way to interfere with the liberty of an individual except to the extent provided for in the statutes. To find that a case is within the intention of the statute its language must clearly say so and it would not be permissible to include a crime within the ambit of a statute simply because it is of an equal atrocity with another crime which is specified in the statute. It is not permissible to put a forced construction on the words of an act on the ground that there is a slip or *causus omissus* in it or on the ground that it must have been *prima facie* intended to be included in it and was omitted to be so included only by mistake. A person charged with an offence or a penalty has a right to say that the subject-matter of the complaint although included within the words of a statute is not within the spirit of the enactment. The correct rule of law is that penal enactments should not be extended by a favourable construction and it is essential that the thing charged should in all cases be included

(4) *Khairati Ram*, In re, 1931 Lah. 476=12 Lah. 635.
(5) 1936 C. 529.

not only within the four corners of the language of statute but also within its actual spirit. When bo these conditions are satisfied the ordinary rules of i terpretation applicable to all statutes become applicab to penal statutes as well.[6] They have then to be co strued like any other instrument according to the fa common sense meaning of the language used and tl Court is not to find or make a doubt or ambiguity in tl language of a penal statute where a similar doubt c ambiguity would not exist in any other instrument. Fc criminal enactments to become applicable it is essentia that the Court should be satisfied that the spirit of th Act has been violated and that the language include the offence.[7] Strictness of interpretation, however does not imply the straining of the language on the sid of the complainant or the subject accused or charge nor is it to be understood as implying that all such statutes should be viewed with suspicion with a desire to arrive at a hostile conclusion nor does it warrant the putting of a restricted meaning on words and a wanton misreading of the statute and a misunderstanding of its purpose and intent. An intelligible description of the offence must be clearly found in the language and it should not be necessary to spell it out after a long and elaborate train of reasoning. When due effect is given to each word in a penal statute on the basis of the maxim *verba aliquid operati debent*,[8] one has to see whether the language makes sense and imports an offence or a penalty. An equitable construction which

(6) *Dykes* v. *Eliat 'The Gauntlet'*, (1871) L.R. 4 P.C. 184 at 191, *per* James, L.J.

(7) *Brett* v. *Robinson*, L.R. 5 C.P. 503 at 513 and 514.

(8) Words ought to have some operation.

is sometimes resorted to in civil cases is not permissible in the construction of penal statutes; that is, the inferential existence of offences not provided for in its language and which the statute has omitted to enact by inadvertence or mistake would not be permitted in criminal law. Where there is a real *causus omissus*, even though the omission may appear to be unintentional it is not permissible for courts to make up for such omission. Words have to be read as pointed out already according to their plain meaning and it is not the province of interpretation to make up the deficiencies of the Legislature[9]. The rule is equally applicable whether the omission flowed from forgetfulness or was intentional. No case should be held to fall within its language which does not come within the reasonable meaning of its terms as well as its spirit and scope[10]. As pointed out in *London County Council* v. *Ayles Bury Co.*,[11] 'where an enactment may entail penal consequences no violence must be done to its language in order to bring people within it but care must be taken that no one is brought within it who is not within its express language. To determine that a case is within the intention of a statute its language must authorise the Court to say so. It is not admissible to carry the principle that a case which is within the mischief of a statute is within its purpose so far as to push a crime not specified in the statute because it is of equal atrocity

(9) *Crawford* v. *Spooner*, (1847) 4 M.I.A. 1792=6 Moo. P. C. 1 (P.C.).

(10) *Municipal Committee, Multan* v. *Bhai Kishan Chand*, 1927 Lah. 276.

(11) (1898) 1 Q.B. 106=67 L.J.Q.R. 724=61 J.P. 759=77 L.T. 440. See also *Hulldock Co* v. *Brown*, 1936 R.R. 45 (Q) quoted with approval in *Ismail Panju* v. *Emperor*, 1926 N. 137.

or of a kindred character with those which are enacte
If the Legislature has not used words sufficiently com
prehensive to include within its prohibition all the case
which fall within the mischief intended to be prevented
it is not competent to a Court to extend them."[12]

2. Fair Interpretation—The Modern Rule.—I
modern times, however, when the rigour of penal law
has been considerably reduced and their administra
tion attempted to be made more humane than in ancien
times, the rule as to the strict construction of pena
statutes as understood in former times has been con-
siderably modified and its rigidity and unbending nature
made more flexible. The rule has come to mean no more
than that such statutes are to be fairly construed like
every other statute according to the legislative intent
expressed in the statute itself or arising out of it by
necessary implication the benefit of the doubt being
always given to the accused or the person charged in
cases where there is a fair and reasonable doubt. The
distinction between a strict construction and a liberal
or what has sometimes been called a beneficial construc-
tion is being narrowed gradually and the tendency is
to subject both of them to the same general rules of
interpretation and attribute the difference if any to the
intention and the object of the Legislature than to any
intrinsic or material difference between one class of sta-
tutes and another. The ascertainment of the legisla-
tive intent is the paramount and primary considera-
tion in both cases. As was pointed out in *Salmon* v.
Duncombe,[13] it would be a very serious matter to hold

(12) See also *Eshan Chander Mitter* v. *Banku Behari Lal*, 25 C.
160; *Municipal Council, Tanjore* v. *Visvanatha Rau*, 21 M. 4 and
Ramdularay v. *Chhindwara Municipality*, 6 I.C. 431.

(13) (1886) 11 A.C. 627=55 L.J.P.C. 69=55 L.T. 446.

that when the object of a statute is clear it should be reduced to a nullity by the draftsman's unskilfulness or his ignorance of the law and in such cases the Courts have gone even the length of supplying a *causus omissus* to effectuate the clear but ill-expressed intention of the Legislature.[14]

3. **Indian Penal Code exhaustive.**—The penal statutes in India are for the most part exhaustive and self-contained and contain within them elaborate definitions and explanations which render the assistance of outside rules and principles superfluous for a large part of them. The Indian Penal Code is one of the most exhaustive Codes of penal laws and devotes a full chapter towards its interpretation clause while an equally large part of it is devoted for the general exceptions which withdraw acts which would otherwise be offences from that category. Its elaborate paraphernalia has been designed, it is said, to prevent captious Judges from wilfully misunderstanding the Code and cunning criminals from escaping its provisions.

4. **Mens rea in Indian Criminal Law.**—*Mens rea* or a guilty mind has from the earliest times been held to be the essential requisite for the proof of a crime. *Actus non facit reum nisi mens sit rea*: An act does not make a man guilty without a guilty intention. There is generally no room for the application of this doctrine in the Indian Penal Statutes as their terms are precise and contain within themselves the precise and particular elements that go to make up the offences referred to in those statutes. Where the doctrine of *mens rea* is intended to come into operation and a guilty mind

(14) *Emperor* v. *Noor Mahomed*, 1928 Sind 1=22 S.L.R. 157=105 I.C. 433 (F.B.).

is deemed essential for the proof of an offence the St tute itself uses words like 'knowingly,' 'willingly 'fraudulently', 'negligently' and so on. In cases whe it is not an essential element of the offence forming th subject-matter of any penal law it is omitted and th mere commission of an act or the failure to do it ar deemed enough to bring the person charged within it language. In the first of these cases *mens rea* has t be proved by the prosecution to establish the offenc which it desires to bring home to the accused and i other cases it may or may not form a ground of defenc and where it so forms even, it has to be established b the defence. In cases where the statute require ar intention to be proved as an essential part of the crim the prosecution must fail if it is not proved. To such cases the general defence that is advanced is the absenc of *mens rea* or as is generally put in the language of Indian Criminal Jurisprudence, a *bona fide* claim of right or the honest and reasonable belief entertained by the accused of the existence of facts which, if true, would make the act charged against the accused an innocent one.

5. **Penal Acts.**—There are again a large class of penal acts created under the Provincial as well as under the Imperial Acts which are really not criminal but which are prohibited by the levy of a penalty in the interests of the public. To such a category belong offences against Revenue, Adulteration Acts, Forest Laws, etc., penalties directed against public nuisances, and cases in which though the proceedings are criminal in form they are only summary modes of enforcing civil rights. To the last of these acts prohibited by statute the doctrine of *mens rea* does not apply except

when on public grounds it is introduced as an element in the offence or the prohibited act or occurs in the language of the statute itself.

6. Examples outside letter of the Penal Acts.—A few examples drawn from decided cases on the penal laws of India would illustrate and amplify several of the principles enunciated above in general language. It is impossible even for an exhaustive code like the Indian Penal Code to provide for all contingencies or to define all terms and expressions which may fall to be considered or interpreted in detecting whether a particular act falls within the definition of a penal statute or no and there must always be cases which would call for the assistance of the interpreter which are not covered or included within the four corners of a Code or any penal enactment. Thus it is criminal to cause a miscarriage under S. 312 of the Penal Code though it is not so to prevent conception though the latter is considered by a large section of public opinion to be an equally reprehensible act. A nurse or an ayah may have 'the care of a child' under S. 317 but she cannot be convicted of an offence under that section as it only applies to a person who has undertaken to support and maintain a child. The word 'leave' in the same section has been held to mean not the mere relinquishment of a child but desertion with the idea of abandoning it to its fate. The word 'child' has not been defined under the Penal Code and has been construed in its plain and popular meaning as an infant which has advanced beyond the stage of being mere foetus and which has secured an independent existence which generally happens after a period of about seven months after conception.

7. **Madras cases.**—In Madras it has been he that S. 40, Indian Penal Code, clearly implies that S. 149 of the same enactment the word 'offence' on covers offences punishable under the Code and does n include an offence under special Acts as those und S. 126 of the Indian Railways Act or S. 7 (*c*) of tl Martial Law Regulation[15] on the ground that a Crim nal Statute has to be rigidly interpreted. In anothe case the same Court laid down that S. 30 of the Ev dence Act was a very exceptional and extraordinar provision as it enabled what was not ordinaril evidence to be used as evidence against the accuse and that in construing such a provision of law the mean ing should not be stretched one line beyond the neces sary intention and that if two interpretations wer grammatically possible that should be chosen which i more in the interests of the accused persons, that whicl would give less scope for extension of the meaning anc the scope of words, in a word a stricter and narrowe construction instead of the more loose or literal import of the terms used. It was accordingly decided that the word 'confession' could not mean the confession of any offence in the world or of any offence that may be disclosed by the evidence but only of the very offence of which more than one person is tried jointly.[16] It was said in the above-mentioned case that to interpret the word 'confession' in any other sense would be to accuse the Legislature of using loose language in a matter of great importance.

8. **Cases from other Courts.**—In a case from Bengal it was held that S. 146 of the Bengal Local Self-

(15) *Puvanur Athamu and others,* In re, 1925 M. 239=20 L.W. 914=86 I.C. 283.

(16) *Periaswami Moopan,* In re, 59 M.L.J. 471.

Government Act of 1885 which speaks of a suit against 'members of any District Board' had no application to a suit against the District Board itself and the shorter period of limitation prescribed for the former had no application to the latter as it would be straining the language to say that the words were intended to indicate something other than what they say.[17] The provisions of S. 20 of the Factories Act (in Bombay) which prohibits 'the employment of a woman or child' 'in the part of a factory for pressing cotton in which a cotton opener is at work' was held not to be fulfilled if there is a door made in a partition between the portions of the room and the door is shown to be open at a particular time or although shut was not locked or other effective means were taken to prevent its being opened by a woman or child wishing to get to the press room.[18] A majority of the Full Bench of the same High Court decided that a 'citation' issued to a person under S. 147 of the Land Revenue Act (U.P. Act III of 1901) was not a summons, notice or order which the recipient was legally bound to obey on the ground that where there was an ambiguity or reasonable ground for doubt in interpretation that should be adopted which is most in favour of the person to be penalised.[19] It was pointed out in the above case that the draftsman had the word 'summons' before him but he deliberately chose to use the word 'citation' instead. The Allahabad High Court has held that a penalty cannot as a rule be enhanced in appeal by mere implication of language

(17) *Allen Mathewson* v. *Chairman of the District Board of Manbhum*, 58 I.C. 749.

(18) *B. N. Gamadia and another* v. *Emperor*, 1926 Bom. 57.

(19) *Emperor* v. *Himanchalsing*, 1930 All. 265=52 A. 568 (F.B.).

and the word 'vary' in the Income-Tax Act, 1922 (S. cannot mean 'enhance' in the absence of a clear indi tion to that effect.[20] In another case it held that word 'moveable property' is large and comprehens but not comprehensive enough to include the body o human being dead or alive.[21] A marriage processi is neither a religious procession nor a public assembla within the meaning of the terms of a licence grant under the Arms Act which required special authoriz tion from a District Magistrate for going armed to fair, religious procession or other public assemblage The Rangoon High Court has held in *Ma You* v. *M Shawe Thin*[23] that where the effect of a legislation su as Order 33, Rule 5 (*a*) was to penalize an applicant *forma pauperis* for a defect of form the legislatio must be strictly construed and not in disfavour of th applicant and ordinary principles of amendment appl cable to the substance of the plaint should also be hel applicable to pauper applications. S. 5 of the Chil Marriage Restraint Act (1929) which penalizes 'wh ever performs, conducts or directs any child marriage refers to the actual marriage ceremony and not to an negotiation, preparation or any other act preliminar to such marriage.[24]

9. Indian decisions to illustrate fair interpretation.— The tendency of modern times to be liberal in the con struction of even penal statutes where the intentio

(20) *Harkrishna Das*, In re, 1931 All. 401=53 A. 679.
(21) *Emperor* v. *Ramadhin*, 25 A. 129.
(22) *Seth Balkishan* v. *Emperor*, 1928 N. 219.
(23) 1933 R. 410.
(24) *Sheik Hondar Sheik Rahimno Attar Musulman* v. *Syed Iss Syed Rahiman Musulman and others*, 1938 N. 235.

of the Legislature appears to be clear and not to permit the rule of strict construction to degenerate into a willing abandonment of even an offender who comes within the spirit of an enactment on a too narrow construction of the language is exhibited in decisions of the Indian Courts. In *Molainappa Goundan* v. *Emperor*[25] it was pointed out that the right to prosecute under the Penal Code cannot be impliedly taken away by provisions of another statute like the Local Boards Act. Justice Wallace held in another case that the words 'alter the sentence' in clause 26 of the Letters Patent(which permits of a review when there is a decision on a point of law amounting to a misdirection) clearly include setting aside the same and directing an acquittal on the ground that a decision not to state the law is equally a decision as one stating it.[1] The learned Judge proceeds further and makes the somewhat fantastic statement that 'the statement of nothing or nonsense' is equally a decision within the meaning of that clause. Chief Justice Schwabe of the same High Court laid down in another case under S. 379 of the Penal Code[2] that if the 'taking' under that section was under a colour of right of a *bona fide* claim the taking was not dishonest or felonious. It was immaterial whether the claim was good or bad. The word 'property' referred to in Ss. 415 and 420, Indian Penal Code, does not include immoveable property though it includes a certificate of having passed an examination.[3] A married woman was held to have been 'taken' away

(25) 1928 M. 1235=52 M. 79=55 M.L.J. 715.

(1) *C. K. N. Sundaresa Iyer* v. *Emperor*, 1930 M.W.N. 249 (F.B.).

(2) *A. V. Srinivasulu Reddiar and another* v. *Govinda Goundan*, 1923 M. 239=44 M.L.J. 138=71 I.C. 798.

(3) *Queen-Empress* v. *Abdul Ahad*, (1882) A.W.N. 6.

under S. 498 of the same Code though the prisoner not take her from her husband's house but the wom herself left it voluntarily and met the accused aft wards on the ground that the section was intended the protection of husbands and the 'knowingly' goi away with the wife of a married man was an offenc If a man is liable for being whipped if he commits offence equally liable would he be when under the ter of a statute he is deemed to have committed the offen though in fact he has not committed but only abett the offence.[5] In the *Municipal Committee, Multan v. Bhai Kishan Chand*[5-a] the omission of the word 're-erec in S. 172 was held to be a *causus omissus* and that t omission was not intentional and there was no reas not to penalize a 're-erection' when the first erecti of an encroachment or structure is penalized. T provisions of S. 476, Cr. P. Code, give a right of appe to any one against whom a complaint is made by Cou acting under the provisions of S. 476 or S. 476-A, C P. Code, and it is immaterial whether the Court ac *suo motu* or on application made to it by some interes ed person. The word 'such' in that section was hel to relate back to the word 'complaint' under S. 476 o S. 476-A and not necessarily to a complaint made o 'application'. The Calcutta High Court has held tha in matters of disqualification such as under S. 12, sub-S (1) of the Municipal Corporation Act, 1882, which dis qualify from membership of the corporation any on who has directly or indirectly by himself or his partne any share or interest in any contract with, by, or o

(4) *Queen* v. *Kumarasami*, 2 M.H.C.R. 331.

(5) *Emperor* v. *Maung Pukai and another*, 7 R. 329=1929 R. 20 (F.B.).

(5-a) 1927 L. 276.

behalf of the Council, the Court should be disposed to view with great disfavour any infraction or breach of the law as the object of the provision was to prevent conflict between interest and duty that might arise.[6] In another Calcutta case the contention that 'anything done' in S. 80 of Ordinance X of 1932 does not include 'penalties' was overruled it being held that the words 'anything done in pursuance of any provision of Ordinance II should be deemed to have been done in pursuance of the corresponding provision of Ordinance X' were very comprehensive and covered and were intended to cover the case of penalties inflicted under Ordinance II.[7] It was pointed out that completed transactions acquired rights, and penalties incurred during the currency of a statute are not in the absence of any language to the contrary unenforceable and do not become inefficacious by the mere fact of the cessation in force of a statute and that this principle had acquired statutory recognition in the Interpretation Act of 1889. In the case of express repeal, the rule being based on considerations of convenience, reason and justice was held applicable to cases of expiration of a statute by efflux of time. It was held on the above principle that S. 21 of the Ordinance II of 1932 authorising the imposition of sentences of imprisonment extending for a period of two years was within the competence of the Indian Legislature and the question whether it was the intention of Parliament in limiting the duration of an Ordinance to a period of six months to limit also the

(6) *Satyendra Kumar Das* v. *The Chairman of the Municipal Commissioners of Dacca*, 34 C.W.N. 972=1931 C. 288.

(7) *Jogendra Chandra Roy* v. *Superintendent of Dum Dum Special Jail*, 60 C. 742=37 C.W.N. 363=1933 Cal. 280.

sentence of imprisonment that might be passed un
the same to a sentence that has to expire on the exp
of the Ordinance was answered in the negative. Th
was nothing in S. 72 of the Government of India Act
justify such a contention as it would lead to the abs
result that not only would the powers of Courts
restricted to passing sentences of only 6 months' du
tion but that in a case tried on the last day of the Or
nance the Court would not be able to pass any sente
other than one of rising with the Court. The conc
sion had only to be stated to point out its absurdity a
was an illustration to show how strange would be
results achieved by the improper extension of the r
of strict construction. All construction should
brought in line as far as possible with common ser
and if the intent of the statute is not apparent from t
words themselves it ought to be presumed such as
consistent with reason and justice. It was likewi
fallacious to contend that ordinances being enacted
meet emergencies must be presumed to be inoperati
after the emergency was over. The Patna High Cou
has laid down that in all legislation which provides f
public control of privately owned property for munic
pal or sanitary purposes where the words are n
defined in the enactments themselves they should receiv
a construction based on an examination of the gener
objects of the Act and so as to harmonize with the tenc
of the whole Act.[8] The Lahore High Court has poin
ed out in one case the distinction between civil an
criminal appeals and revision petitions and has point
ed out that while in the matter of a civil appeal wher
the period of limitation expires, a valuable righ

(8) *Abdul Rauf* v. *Banarsi Lal*, 1932 Pat. 281=13 P.L.T. 461.

accrues to the respondent of which he cannot be deprived lightly, in the case of criminal appeals or revisions no question of valuable right to the crown arises and provisions relating to the same should therefore be liberally construed.[9] In a copyright case that arose for determination in the same High Court it was laid down that all laws which put a restraint on human activity and enterprise must be construed generously and in a reasonable spirit and under the guise of a copyright a plaintiff cannot ask the Court 'to close all avenues of research and scholarship and all frontiers of human knowledge'. On the above principle the later publication of Dashmesh Partab of the defendant in the case was held not to be a copy or a servile copy of his earlier work (which he had sold to the plaintiff some time earlier) within the meaning of the Copyright Act, 1911, as that the former represented a more 'maturer art, a greater wealth of detail in depicting events and superior imagery' and contained fresh incidents and details which are the result of research made by the author.[10]

(9) *Surta Singh* v. *Emperor*, 59 I.C. 556.
(10) *Kartar Sing* v. *Ladha Sing*, 1934 Lah. 777=16 L. 103.

CHAPTER II.

Construction of Fiscal Statutes.

1. Interpretation of Fiscal Statutes a Practical A

—What applies to penal statutes applies with eq force to fiscal statutes, the latter creating a restra on the enjoyment of property and the former deali with restraints on the liberty of the person. Prope speaking it is not as though the ordinary rules of int pretation are inapplicable to any particular kind statutes but that where there is a doubt or possibili of more than one construction being placed upon the language it has long been established that they shou be construed strictly so as not to impose more burde on the person affected than the language clearly ind cates. As it has been put, *in dubio,* you should lea against a construction which imposes a burden on th subject. As Lord Tenterden put it in *The Hull Doc Co.* v. *Browne,* a tax cannot be deemed to be impose for the benefit of a subject without a plain legislativ declaration to that effect. The most authoritativ statement of the law may be said to be contained ir *Partington* v. *Attorney-General*[1] where Lord Cairns summarizes the legal position thus, '. . . . . the principle of all fiscal legislation is this. If a person sought to be taxed comes within the letter of the law, he must be taxed however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax cannot bring the subject

(1) (1869) L.R. 4 H.L. 100 at 122.

within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words if there be admissible in any statute, what is called the equitable construction, it is not admissible in a taxing statute, where you simply adhere to the words of the 'statute'. There is nothing like an *a priori* liability in a subject to pay any tax. A tax payer has a right to insist upon a literal construction of the status being adopted irrespective of how it may effect the tax-gatherer.[2] It is not permissible to assume any intention of the Legislature in regard to a taxing statute. There cannot be assumed to be any governing object which a taxing statute is intended to obtain except to impose a tax and hence the primary question in all such acts is to see whether the same is expressly imposed and whether the words have reached the subject of taxation. The object of taxing statutes is not necessarily or even generally concerned with the legal meaning of words unless where they are used as words of art.[3] All charges on the subject have to be imposed by clear and unambiguous language, a language that is perfectly clear and free from doubt for in a sense they all operate as penalties.[4] The art of interpreting special statutes imposing a burden on a subject is not an exact science but a practical art and the cases that arise have to be

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(2) *Pryce* v. *Manmouth Shire Canal and Railway Cos.*, (1879) 4 A. C. 197 at 202 and 203=49 L.J. Ex. 130 at 134.

(3) *Smelting Company of Australia* v. *Commissioners of Inland Revenue*, (1896) 2 Q.B. 179 at 184=65 L.J.Q.B. 513 at 514.

(4) *Clifford* v. *Commissioners of Inland Revenue*, (1896) 2 Q.B. 187 at p. 192=65 L.J.Q.B. 582 at 585.

interpreted according to the precise language used not on general principles or principles of common la

2. **Privy Council on strict construction of Fi** statutes.—The Privy Council has laid down that ta tion to be effective must be imposed by clear words a that it is opposed to principles of sound judicial c struction of fiscal statutes that any addition should made to the words of a statute in a generous spi having the effect of accelerating the process of gradu tion prescribed in any such.[6] The same high author has stated in a more recent case[7] that the sections of Taxing Statute ought not to be pressed against the t payer beyond the plain intendment and the defini purpose evidenced by the language employed by t Legislature. The language ought in no case to strained nor should an attempt be made to supp omissions.[8] An assessee is entitled to object to th payment of a tax where he cannot be reasonabl brought within the purview of a taxing section.[9] Th intention to tax should be clear and positive.[10] wider meaning may have to be rejected in preferenc to a narrower one to avoid exceeding the intention o the Legislature.[11] Fiction has no place where substan

(5) *Swayne* v. *Inland Revenue Commissioners*, (1899) 1 Q.B. 33 at p. 341, *per* Willes, J.

(6) *Rajal Trust Co.* v. *Minister of Finance of the Province o British Columbia*, 1921 P.C. 184.

(7) *Vacuum Oil Co.* v. *Secretary of State*, 59 I.A. 258=63 M.L.J 437=56 B. 313=1932 P.C. 168 (P.C.).

(8) *Ramaswami* v. *Rangaswamy*, 55 M. 26=61 M.L.J. 933=1931 M. 683.

(9) *Central Urban Bank* v. *Madras Corporation*, 1932 M. 474 at 482=62 M.L.J. 720.

(10) *Rainier* v. *Gould*, 13 M. 255.

(11) *Janardhana Rao* v. *Secretary of State for India*, 1931 C. 193=34 C.W.N. 470=58 Cal. 33.

tial justice does not require interference and when on the other hand it would suffer from its operation.[12] Statutes imposing pecuniary burdens or any other charges must use the clearest and the most unambiguous language and where there are technicalities to deal with, they should be strained in favour of the subject if they are to be strained at all.[13] Courts are not concerned with the intention of the Legislature in dealing with fiscal statutes nor with the spirit of the legislation. The Court has to look merely to the letter of the law unless the contrary appears from the language of the enactment itself.[14] The scope of the Income-Tax Act cannot be extended by analogy nor can a beneficial or equitable construction be placed upon it to prevent a real or supposed anomaly.[15]

3. **Beneficial Construction.**—The doctrine of strict construction is also sometimes denominated as the rule of beneficial construction. It is the same doctrine looked at from a different or from the opposite standpoint. Where the interpretation is limited to the words employed without their extension to matters which might have been in the contemplation of the Legislature but which have not been described in sufficiently clear or comprehensive language the result would undoubtedly be beneficial to the subject. Neither the strictness in the one case nor the beneficial nature in the other are absolute in themselves but conditioned by

(12) *Per* Mansfield in *Johnson* v. *Smith*, (1760) 2 Burr. 950=97 E. R. 647.

(13) 1937 Oudh 416.

(14) *Commissioner of Income-tax, Bihar and Orissa* v. *Kameshwar Singh of Darbhanga*, 13 Pat. 336=1934 P. 178.

(15) (*Bhagat*) *Jivan Das and others* v. *I. T. Commissioner, Lahore*, 10 Lah. 657=1929 L. 609 (F.B.).

the initial ambiguity or the possibility of dual interp tation which render the same necessary. It was po ed out by the Madras High Court that if the langua is at all ambiguous it must be interpreted in the mann most beneficial to the subject and that a small additi to its income by a temple made by the investment of surplus funds cannot in any sense be said to be t exercise of a profession or the earning of a profe sional income[16] within the meaning of S. 93 (1) of t Madras District Municipalities Act of 1920. In li manner in construing a fiscal notification[17] which spol of 'possession' of 'a fractional share of part of a estate' a definite share within defined boundaries an a definite area was held to come within the terms o the notification as 'a fractional share' covered both definite fraction as well as an indefinite fraction and a such a construction would in no way do violence to th English language. It was pointed out that the Court Fees Act under which the above decision was passed was a fiscal enactment and ought to be liberally con- strued and a fairly reasonable construction avoiding an anomaly should be placed on its language.[18] In a Full Bench decision of the same High Court[19] while the general rule as to the construction of taxing statutes was affirmed it was pointed out that there were limi- tations subject to which the rule had to be applied in practice. It was stated that to ascertain in the first

(16) *Madura Devastanam* v. *Madura Municipality*, 1928 M. 569=51 M. 301=54 M.L.J. 625. See also *Kuppu Govinda Chettiar* v. *Uttukottai Co-operative Society*, 1937 M. 604=(1937) 1 M.L.J. 640.

(17) Notification of the Government of India, No. 358, dated 10th September, 1921.

(18) *Subramania Iyer* v. *Rama Ayyar*, 1927 M. 1002=54 M.L.J. 67.

(19) *Best & Co., Ltd.* v. *Corporation of Madras*, 47 M. 262=46 M. L.J. 217=1924 M. 420 (F.B.).

instance whether the language was susceptible of two equally opposite constructions, the ordinary rules of construction had to be applied. The rule did not mean that words are to be unduly restricted against the taxing authority but all that has to be done is to look merely at the language employed, making no room for any intendment and always remembering that there is neither equity nor presumption in regard to a tax and that nothing has to be read in or implied in regard thereto but close attention has to be paid to the language used.[20] As was pointed out in another leading case[21] it is not quite accurate to say that special canons of interpretation govern fiscal statutes and that while it no doubt fell to the duty of a Court to ascertain the subject-matter to which the statute was intended to be applied, it was not open to the Court when that was done to narrow or whittle down the operation of the Act by seeming considerations of hardship or of business convenience or the like.

4. **Summary of the legal position**—The whole position has been somewhat clearly and briefly put in the form of a few proposition in a Patna case.[22]

(*i*) If a person on whom a tax is imposed comes within the letter of the law, he must pay the tax however great a hardship it may appear to the judicial mind. (*ii*) If the Crown seeking to tax a subject cannot bring him within the letter of the law, the subject is free however much within the spirit of the law the

(20) *Cape Brandy Syndicate* v. *Inland Revenue Commissioners*, (1921) 1 K.B. 64.

(21) *Attorney-General* v. *Carlton Bank*, (1899) 2 Q.B. 158.

(22) *Deputy Commissioner, Singhubhum* v. *Jagadishchandra Deo*, 62 I.C. 513=6 P.L.J. 411.

case may be. (*iii*) No equitable construction is p missible in interpreting a fiscal statute.

5. Burden of proof on the Crown.—The Cro fails if a case is not brought within the words of statute and any such defect in a statute if discover can be cured only by the interference of the legislatu and not by a benevolent construction in favour of t Crown.[23] Where a condition precedent is laid dow for the imposition of a tax, the tax cannot be levied t the act is done, the burden of proof being always on t authority imposing the tax.[24] It is not permissible i cases where the language of a statute is ambiguous, t extract out of that ambiguity a new and an adde obligation not formerly cast on the payer.[25]

6. Motive irrelevant in Taxing Statutes.—Th motive of the assessee or the tax payer in attemptin to circumvent the incidents of a taxing statute is per fectly legal so long as he is within the letter of the law and a Court of law is not entitled to take such motive into consideration in deciding a question of interpre tation.[1] It is open to a subject to take advantage o any camouflage that the law allows or does not forbid and the Court cannot attempt to disregard the form of the claim and attempt to look at the substance of it.[2] It is also immaterial that a device or subterfuge is re-sorted to avoid payment of stamp duty as Courts are

(23) *Deputy Commissioner, Singhubhum* v. *Jagadishchandra Deo*, 62 I. C. 513=6 P.L.J. 411.

(24) *Chairman Dhanbad Municipality* v. *Jajneswar*, 1934 Pat. 83= 148 I.C. 913. See also *Baijnath Prasad and others* v. *Umeshwar Singh and others*, 1937 Pat. 550 (S.B.).

(25) *Jiwandas* v. *Commissioner of Income-tax*, 1929 Lah. 609 (F.B.).

(1) *Commissioner of Income-tax* v. *Ibrahimsa*, 1928 M. 543=51 M. 455=54 M.L.J. 524 (F.B.).

(2) *Pathumma Umma* v. *A. Mohideen*, 1928 M. 929=110 I.C. 752.

not concerned with that aspect of the matter if such a procedure is permissible under the law.[3]

7. **Illustrations.**—Where under S. 6 of the Income-Tax Act it is stated that income from business is assessable to tax only if it is not 'agricultural income' the order of things cannot be reversed and agricultural income held to be only income which is not business income.[4] Where accordingly an assessee takes a usufructuary mortgage from a mortgagor and leases it back again to that person receiving rent from him the rent is not assessable to income-tax. The Madras Central Urban Bank, Ltd. and the Madras City Co-operative Bank were both held to be companies liable to pay company tax under S. 110 of the City Municipal Act of 1918 interpreting the same in a broad spirit and accordingly exempt from payment of profession tax under S. 111 of the same Act.[4-a] A stipulation to remunerate a pleader in advance is a necessary part of the vakalatnama and not a separate agreement as contemplated by S. 5 of the Stamp Act and the vakalatnama constituted one indivisible contract and was accordingly chargeable under Art. 10, Schedule II of the Court-Fees Act.[5] Where one is doubtful as to whether a fixed or an *ad valorem* court-fee is payable it is reasonable to refuse to pay an *ad valorem* court-fee till it is decided that it is so expressly payable.[6] Where the Bengal Court-Fees (Amendment) Act of 1922 came

(3) *Bholaram & Sons* v. *Emperor*, 1934 Lah. 530=15 Lah. 501 (S. B.).

(4) *Commissioner of Income-tax* v. *Ibrahimsa*, 1928 M. 543=51 M. 455=54 M. L. J. 524 (F.B.).

(4-*a*) *Central Urban Bank* v. *Madras Corporation*, 1932 M. 474 at 482=62 M.L.J. 720.

(5) *Radha Gobinda* v. *Ram Brahma*, 1936 C. 814.

(6) *Shihan* v. *Abdul Alim*, 1930 C. 787=34 C.W.N. 1129=58 C. 474.

into force in 1—4—1922 between the date of applicat for probate and its grant it is the original Act and the amendment that applies.[7] It is the privilege of assessee that he should not be taxed without a proj investigation of his income and in spite of the w powers vested with Income-tax authorities under Act it could never be the intention of the framers the Act that the mere word of the Income-tax Offi should be final and such a proposition cannot be su ported without a clear language in the Act to th effect.[8] The meaning of S. 22 (4) read with S. 23 (is not that the power of an Income-tax Officer should allowed to hang like the sword of Damocles on the hea of the proposed assessee to be applied at any time shut out an enquiry by the appellate Court and for th acceptance of the Income-tax Officer's word as th final word.[9] The Assistant Commissioner of Incom tax has no authority to enhance income-tax in a appeal under Ss. 28, 31 and 32 of the Act and the word 'affirm, cancel, vary' were held not to include enhance ment by implication in construing the language of fiscal Act like the Income-tax Act.[10] A notificatio issued under the Madras District Municipalities Act o 1884 was held to be insufficient to legalize the levy of property tax under S. 81 of Act V of 1920 in th same province.[11] The definition of "assessee" in S.

(7) *Phaddens S. Nahalite and others* v. *Secretary of State*, 39 C L.J. 209=81 I.C. 751=1924 C. 987 at 988.

(8) In the matter of *Lachhman Prasad Babu Rao of Cawnpore* 1930 All. 49.

(9) *Ibid.*

(10) In re *Harkrishnadas of Golagali of Benares*, 53 A. 679=1931 All. 401.

(11) *Municipal Council, Cuddappah* v. *M. & S. M. Ry. Co.*, 1929 M. 746.

(2) of the Income-Tax Act applies only to a living person and not a heir or a legal representative.[12] The criterion in determining whether income is agricultural income or no is to test its source in its proximate rather than its ultimate significance nor is the taxing authority concerned with the intention of the assessee in making the investment.[13] Property purchased in the Punjab from profits received in British Baluchistan cannot be said to be received in British India and is not therefore assessable as such.[14] The particulars of the oral contract constituting the title of the allotter do not fall within the definition of a conveyance within the meaning of S. 104 of the Indian Companies Act.[15] A local authority is not empowered under the Municipal Acts creating it to impose excessive license fees simply because they are authorised to levy such fees. Accordingly Schedule 2, Chapter 15, R. 2 of the Rangoon City Municipal Act (VI of 1922) is *ultra vires* and invalid; the intention of the statute was only to charge a fee which would save the corporation from being out of pocket by reason of duties and liabilities imposed upon it by the Act of the supervision and regulation of private markets.[16] There is a judgment of the Madras High Court to the same effect in *Corporation of Madras* v. *Messrs. Spencer and Co.*[17] The

(12) *Commissioner of Income-tax, Bombay* v. *Ellis C. Reid*, 1931 B. 333=55 B. 312=33 Bom.L.R. 383.

(13) *Commissioner of Income-tax, Bihar and Orissa* v. *Kameshwar*, 1934 Pat. 178.

(14) *Sundar Das* v. *Crown*, 3 L. 349=1923 Lah. 14 (F.B.).

(15) *Santa Singh* v. *Kahan Singh*, 15 Lah. 501=1934 Lah. 530.

(16) *Municipal Corporation of Rangoon* v. *Sooratee Bara Bazaar Co.*, 1927 R. 183.

(17) 57 M.L.J. 71=1930 M. 55=52 M. 764.

rights of appeal granted under Revenue statutes should be construed in such a fashion as to enable full advantage being taken of the same and no conduct of the executive ought to be enabled to diminish the full period of limitation allowed to the assessee.[18] An ordinary bicycle with a motor wheel which may be affixed to or detached from the bicycle itself as the rider chooses is neither a motor car nor a motor cycle and cannot be taxed as either such unless a clear notification bringing it within the terms imposing additional liability by way of tax is obtained.[19]

7. **Unduly narrow and absurd construction to be avoided.**—That a strict construction does not warrant a too narrow or absurd construction of the language even in a fiscal statute is illustrated in the decision reported in *Best & Co., Ltd.* v. *The Corporation of Madras*.[20] In that case it was contended that the application of the Madras City Municipal Act IV of 1919 was limited only to companies whose capital was in shares of a rupee denomination as indicated in S. 110 and Rule 7 of Schedule IV but the argument was negatived and it was pointed out that these provisions only state the scale in terms of the currency of the country and there was absolutely no difficulty of answering the question how many lakhs of rupees was the capital of an English Company with a capital in pounds sterling. It cannot be read as excluding companies whose nominal capital is expressed in the currency of some other country.

(18) *Ramanatha Reddiar* v. *Commissioner of Income-tax*, 1928 R. 152.

(19) *George Banerjee* v. *Emperor*, 36 I.C. 877=14 A.L.J. 850.

(20) 46 M.L.J. 217 (F.B.).

Such a construction would be giving preference to foreign over local companies.

8. The tendency of modern times is to narrow the difference between what is called a strict and what is known as liberal or equitable construction. As Justice Holloway put it in *Syed Ali Saheb* v. *Zamindar of Salur*[21] a barbarous code of penal laws was responsible for such distinctions and the reason for the distinction disappearing the doctrines themselves are disappearing also.

(21) 3 M.H.C.R. 5. See also *Namdev Co-operative Agency* v. *Virdhaval*, 1937 Bom. 266 at 271.

CHAPTER III.

Construction of Statutes of Limitation.

1. Limitation Acts if unambiguous have to be applied with stringency and the supposed hardness of a case ought not to lead to a deviation of the proper interpretation of the clear language of the statute.[1] It is not permissible for Courts to extend the time allowed by law or defer its operation or introduce exceptions to the statute not warranted by the language thereof[2] nor to place an equitable construction on them.[3] Acts of Limitation being restrictive of the ordinary right of people to take proceedings are disabling in their nature and before they are applied it should be clearly shown that they apply to the cases, in which their operation is sought to be invoked. In cases, however, where the language is not unequivocal but is susceptible of more than one interpretation it should be construed in favour of the right to proceed on the principle that no one should be deprived of rights to which he is entitled under the law in the absence of clearly worded statutes, withdrawing such rights. Statutory exceptions to the rule of limitation are construed liberally in favour of the plaintiff and of his right to sue.[4]

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(1) *E. I. Co.* v. *Odi and Charan Paul*, 5 Moo. I.A. 43.

(2) *Kristo Komul Sing* v. *Huree Sirdar*, 13 W.R. (S.C.) 44=4 Beng. L. R. 101 (F.B.).

(3) *Beckford* v. *Wade*, 17 Vesey 87=34 E.R. 34.

(4) *Poorno* v. *Sasoon*, 25 C. 496 (F.B.); *Leach* v. *Lamb*, 156 E.R. 902=11 Ex. 437.

2. Justice Mahmood however opined that exceptions should be construed strictly.[5] As in all statutes in general, literal construction of Limitation Acts is departed from and a reasonable construction put upon the words to effectuate the intention of the Legislature where any other course would lead to palpable injustice, contradiction or absurdity.[6] The Limitation Act of 1908 was amended to avoid the repugnance and absurdity pointed out by Justice Bhashyam Iyengar in the above case. In a case arising under S. 92 of the earlier Limitation Act (X of 1859) where it was laid down that 'no process of execution shall be issued on a judgment after the lapse of three years, etc.' it was held that the words 'shall be issued' should be construed as 'applied for with success'. Otherwise the decree-holder might lose the benefit of his decree even if he applies for execution the day after the judgment as no execution might be issued on his application on account of the laches of Court and he would have to pay for the delay of Court. The general principle of law in all such cass is *actus curiae neminem gravabit* (The Act of Court hurts no person) and statutes should be construed conformably to the same.

3. Similarly where the first Court erroneously refused to add a party as co-plaintiff and the appellate Court ordered the same after the period of limitation was over, it was held that parties should not suffer for the mistakes of Courts and the application was directed to be treated as having been made within time by being

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(5) *Manghu* v. *Kandhai*, 8 All. 475.

(6) *Raja of Vizianagaram* v. *Raja Satrucherla*, 26 M. 686 at 717.

deemed to operate *nunc pro tunc* 'now for then'.[7] On similar grounds, the date of the judgment, was construed to mean 'the date when the rent or money is adjudged to be payable,' the date of the award, as meaning the time when it is given to the parties, in cases arising under the earlier Acts.[8] Another principle in the construction of the Acts of Limitation is that the various Articles should be construed so as to harmonize with each other and that the entries in the first column should be read as to make them consistent with entries in the third column. Where an Act is being amended or re-enacted from time to time there is a strong presumption that the Legislature does not intend to effect a violent change in the law by a mere alteration in the language of any phrase or expression employed.[9] As Maxwell has pointed out a change in language as such does not necessarily lead to the inference that there is a change in the intention of the Legislature. Statutes of limitation are generally construed as relating to procedure but they ought not on that account alone be retrospective in effect in the absence of a clear indication to the contrary especially when the effect of giving retrospective effect would be to defeat a vested right or the right to plead a claim to have been time barred. For a long time there was a conflict of opinion as regards whether sections of the Limitation Act extending the period of limitation in specified cases of disability or on other grounds applied

(7) *Ramakrishna* v. *Ramabai*, 17 Bom. 29; *S. I. Industries, Ltd.* v. *Narasimharao*, 50 M. 372.

(8) For a fuller list of cases, *vide* Lecture VII on the construction of statutes of limitation in Mitra's Limitation and Prescription, Tagore Lectures, 6th Edition.

(9) *Girwarsing* v. *Thakur Narain Sing*, 14 C. 730.

to special or local laws but the controversy regarding the same has been set at rest by the amendment of S. 29 of the Limitation Act of 1908 according to which Ss. 3, 4, 9 to 18 and 22 of the Limitation Act apply even to periods of limitation prescribed under special and local laws to the extent they are not excluded by such special or local laws.

CHAPTER IV.

Construction of Statutes affecting the Crown.

1. Crown not bound by Acts of Legislature normally. The general principle of English Law is that the Crown is not bound by Acts of the Legislature unless specifically mentioned therein, the ordinary presumption being that laws are made for the benefit of the subjects and not the Crown. In statutes restricting rights and interests the ordinary rule of construction is that they should not be deemed to embrace the sovereign or the Government unless the same is indicated by express language or has to be inferred by necessary implication. A merely general or wide language does not of itself exclude or take away the prerogative of the Crown. One of the prerogatives of the Crown is not to pay tolls or rates.[1] An exception is made however in statutes relating to public good, the advancement of religion and justice, the prevention of fraud and the suppression of wrong[2] as also cases that tend to perform the will of a founder or donor. Where neither prerogative nor the property of the sovereign is concerned the presumption does not apply.

2. Bell's case.—At one time it was doubted whether the Indian Legislature could enact laws affecting

(1) For a detailed list of statutes and taxes not applicable to the Crown, *see* Chap. V, S. 2 of Maxwells Interpretation of Statutes, 7th Ed., pp. 117 to 122.

(2) *Ibid.*, p. 121.

or taking away the prerogative of the Crown in matters forming the subject-matter of the legislation.[3] The matter was exhaustively discussed by Justice Bhashyam Iyengar in *Bell* v. *The Municipal Commissioners for the City of Madras*.[4] Mr. Bell, the Superintendent of the Gun Carriage Factory at Madras caused to be brought within the City of Madras some timber without obtaining a license from what was then the Madras Municipality for which he was convicted by the Chief Presidency Magistrate. He carried an appeal to the High Court against the conviction and the Chief contention put forward on his behalf was that the Crown was not bound by the taxing provisions of a local statute as the City of Madras Municipal Act (I of 1884) was unless there were express words to bind it or unless the inference was irresistable from the provisions of the Act that such was the intention of the Legislature. The High Court found that the conviction was right and that the Government was liable to pay the duty imposed under S. 341 of the said Municipal Act. It was pointed out that the English law relating to the prerogative of the Crown does not in terms apply to India and the extent to which English decisions could be a safe guide in Indian Courts depended largely on the policy and course of Indian Legislation and the powers of the Indian Legislatures and the Provincial Legislatures in particular which pointed to the fact that the rule was not applicable to such enactments.

3. **3 and 4 William IV Chapter 85.**—The earliest Act of importance dealing with the matter is 3 and 4

(3) Government of India by Sir Courtenay Ilbert, pp. 223 and 226.
(4) 25 M. 457=12 M.L.J. 208.

William IV (1783) Chap. 85 vesting the legislative power of the Indian Government exclusively in the Governor-General in Council.

Section 43 of that Act prohibited the Governor-General in Council from making any laws affecting the prerogative of the Crown. It was modified by S. 26 of 16 and 17 Vic. Chap. 95 which provided that no law or regulation made by the Governor-General in Council shall be invalid by reason only that the same affects any prerogative of the Crown provided such law or regulation shall have received the previous sanction of the Crown signified under the Royal Sign Manual of Her Majesty countersigned by the President of the Board of Commissioners for the affairs of India.

4. The Indian Councils Act 1861 repealed the above two provisions and restored the legislative powers of the Provincial Governors in Council. Section 22 of that Act defined the legislative powers of the Governor-General in Council in the same terms as S. 43 of 3 and 4 William IV, Chap. 85 except that it did not exclude the prerogative of the Crown from the legislative authority of Governor-General in Council save in regard to the allegiance of any person to the Crown or to the sovereignty or dominion of the Crown over any part of the Indian territories. Section 24 provided against the invalidity of laws made by the Governor-General on account of their affecting the prerogative of the Crown and was virtually a reproduction of S. 26 of 16 and 17 Vic. C. 95 which was repealed as aforesaid. This was really superfluous and inserted. '*Ex Majore Cautela*'. Section 42 enabled the Provincial Governors in Council to make laws for the

peace and good government of the Province. It enabled therefore the Governor-General in Council to pass legislation touching the prerogative of the Crown except in regard to specified matters already referred to but there was not a like provision with regard to the Provincial Legislatures, but Justice Bhashyam Iyengar inferred from the provisions of S. 42 that the Provincial Legislature was conferred the power to affect the prerogative by implication as included in the power to legislate for 'peace, order and good government' of the Province. As has been pointed out in *The Queen* v. *Burah*[5] the Indian Legislatures like the Colonial Legislatures are not delegates of the Imperial Legislature and though their powers are restricted, within the area of that sphere they are supreme and have plenary powers of legislation 'as large and of the same nature as those of Parliament itself'.

5. Bhashyam Iyengar, J., on Rights of the Crown. —The powers of the Indian Legislatures in regard to the Crown and the Government were nowhere laid down with so much precision and particularity as by Justice Bhasyam Iyengar in the case of *Bell* v. *The Municipal Commissioners for the City of Madras* where the conclusions of the learned Judge were couched in the following propositions of law.

"(1) The canon of interpretation of statutes that the prerogative or the rights of the Crown cannot be taken away except by express words or necessary implication, is as applicable to the statutes passed by the Indian Legislatures as to Parliamentary and Colonial statutes; and this is really concluded by the authority

(5) L. R. 3 App. Cas. 889.

of the Privy Council in more appeals than one from the Colonies.

(2) When in an Indian Act the Crown is not expressly included and the question is whether it is bound by necessary implication the course of Indian legislation and Acts in *pari materia* with the Act in question will have an important bearing upon the construction of the Act.

(3) Notwithstanding that in several Indian enactments the Crown has been specially exempted, the above rule of interpretation will nevertheless hold good in construing the provisions of an enactment from the operation of which the Crown is not expressly exempted, when a question is raised as to whether such provisions take away a right, or prerogative of the Crown.

(4) The said rule, based like other cognate rules of construction upon the maxim '*Generalia specialibus non derogant*' is not really a prerogative of the Crown though such rules as well as the rule relating to the construction of Crown grants are dealt with in treatises under the head of 'prerogative of the Crown' and also loosely referred to as such in some English decisions.

(5) The English law as to the exemption of the Crown and Crown property from payment of tolls, poor rates and other taxes, local or imperial imposed by statutes rests partly on historical reasons and principally upon judicial decisions which do not proceed upon a course of reasoning or principle which will be binding on Indian Courts.

(6) Exemption from payment of tolls rates, and taxes is not in reality a prerogative of the Crown, but

depends solely upon the construction to be put upon the Crown grant or statute in question.

(7) Since the passing of the Indian Councils Act 1861, not only the Viceregal Council but also the Provincial Councils can without obtaining the previous sanction of the Crown, make laws affecting the prerogative of the Crown when such prerogative has no relation to any of the matters specially exempted from their respective legislative jurisdictions.

(8) Even if the imposition of a duty or tax upon Crown property be regarded as affecting the prerogative of the Crown, it is competent for the Provincial Legislature to impose such duty or tax, which will be payable out of the current public revenue, measures affecting which, or imposing charges whereon are specially contemplated by S. 38 of the Indian Councils Act being within the competence even of Provincial Legislatures.

(9) According to the uniform course of Indian legislation, statutes imposing duties or taxes bind Government as much as its subjects unless the very nature of the duty or tax is such as to be inapplicable to Government, and whenever it is the intention of the Legislature to exempt Government from any duty or tax which in its nature is not inapplicable to Government, the Government is specially exempted by legislation and this is specially so in regard to taxes imposed by the Legislature for the benefit of local authorities and in particular Municipalities.

6. Dissent of Bombay High Court.—The view of Justice Bhashyam Iyengar however, was dissented from in a recent decision of the Bombay High Court reported in

Hiranand Khushiram Kirpalani v. *Secretary of State*[6] wherein it was held that the Crown was not bound by the provisions of the City of Bombay Municipal Act 1888. In the above case the Municipal Commissioner of Bombay claimed compensation from the Secretary of State for the levelling draining and lighting of a private street adjoining which the Government owned a piece of land on failure by the latter to do the said acts, under the provisions of S. 305 of the City of Bombay Municipal Act, 1888. His Lordship Chief Justice Beaumont while holding that the provisions of Chapter VIII of that Act relating to Municipal taxes bound the Crown held that the same did not lead to the conclusion that it was intended that the Crown was bound by provisions in another chapter of that Act dealing with the regulation of streets and this notwithstanding the fact that in S. 299 occurring in the same chapter as S. 305 the Crown is referred to in sub-S. (2) and is expressly exempted from the operation of the power given under sub-S. (1) of the same. His Lordship was of the opinion that reading the relevant sections together and applying the general rule against legislation binding the Crown in the absence of specific mention, there was nothing to point out that the inference arose at least by necessary implication. His Lordship placing reliance upon the decisions of the Bombay High Court and of the Privy Council decisions referred to in the Madras case held that the inference drawn from the latter that the Crown was bound unless specially exempted could not be accepted as it was in conflict with the general rule so laid down. Justice Rangnekar, J., in agreeing

(6) 58 B. 635=36 Bom.L.R. 820=1934 Bom. 379.

with the learned Chief Justice pointed out that the effect of accepting the decision in the Madras case would be to cast on the Crown the *onus* of proof that the Government was exempted by necessary implication instead of throwing the burden on the party who set up the liability of the Crown and such a proposition was unacceptable to his Lordship. The same two judges sitting as a Bench had to decide some time later a case of a converse type and to pronounce an opinion on whether the Crown was bound by necessary implication by S. 212 of the Bombay City Municipal Act (which renders property liable to a charge for property tax) and whether Government property in Bombay was liable for the same or whether the Municipal Act levying such a charge was *ultra vires* the Bombay Legislative Council as it purported to legislate in derogation of the prerogative of the Crown.[7] His Lordship Beaumont, C. J., came to the conclusion that in 1888 when the Bombay Municipal Act was passed the Local Legislature had no power to legislate in derogation of the prerogative of the Crown as in his Lordships' opinion S. 26 of the Government of India Act, 1883 while empowering the Governor-General in Council to pass such a law did not empower the Local Legislature to do likewise. But his Lordship pointed out that on account of S. 84 of the Government of India Act 1915 which, amended by Act of 1916 extended the power to local legislatures also and made it retrospective in character, there was no question of invalidity or *ultra vires* so far as the Municipal Act was concerned after the Amending Act was passed. When confronted with the judgment *Hira-*

(7) *Secretary of State* v. *Municipal Corporation of Bombay*, 1935 Bom. 347.

nand Khushiram v. *Secretary of State*[8] to the effect that the Crown was not bound by Acts of Parliament unless named expressly or by necessary implication his Lordship distinguished it as one dealing with streets whereas in the later case they were dealing with a section dealing with taxation and in the later case there was no dispute about the Crown being bound in matters relating to taxation. The language of the Act clearly pointed to the fact that it was the intention of the Legislature that all buildings and lands were liable to pay the property tax whether the same belonged to Government or private individuals. A reading of the section and the contemplation of the consequences flowing from the same led to the necessary implication that the Crown was bound. Any other construction would lead to an anomaly making Government land liable to the tax but leaving the Corporation entitled to the same without any remedy to recover the same.

7. **Recent English view.**—In the somewhat more recent English case *British Coal Corporation* v. *The King*[9] Lord Sankey while reaffirming the principle that the King's prerogative cannot be restricted or qualified except by express terms or by necessary intendment, held that the British North America Act invested the Dominion Parliament with such a power not by express terms but by necessary implication. It would thus stand to reason that the principles laid down in *Bell's case* having been affirmed it is within the competence of Indian Legislatures including Provincial Legislatures to enact provisions that may affect the prerogative of the Crown.

(8) 58 B. 635.
(9) 1935 A. C. 500.

8. **Government of India Act 1935.**—Section 84 (1) (*a*) of the Government of India Act 1919 contained a similar provision as in the prior statutes which it replaced saving the validity of Indian Legislation affecting the prerogative of the Crown but the same is not repeated in the Government of India Act 1935. Section 99 (1) of the latter Act merely enacts that the Federal Legislature may make laws for the whole or any part of British India or for any Federated State and a Provincial Legislature for the Provinces. But it cannot be contended on that ground that the powers which the Indian Legislatures have possessed and have been exercising since 1853 were in any way intended to the cut down. The fact that in S. 110 of the same Act amongst the Savings of the Powers of Parliament the only sub-clause dealing with the prerogative of the Crown occurs in sub-section (*iii*) dealing with the right of His Majesty to grant special leave of appeal to the Privy Council further confirms the view that the other rights of the Legislatures were not intended to be interfered with. The question whether the Crown is bound is however one ultimately depending upon the language of the statute and its construction as has been pointed out already.

9. **Acts of State.**—Closely allied with the liability or otherwise of the Crown under Acts of the Legislature is the subject of how far Acts of State can form the subject-matter of adjudication by civil Courts. In the leading case of the *East India Company* v. *Kamachee Boyee Saheba*[10] it was held that the transactions between Independent States are not subject to the control of Municipal Courts and that the seizure of the Raj of

(10) 7 M.I.A. 476=4 W.R.P.C. 42.

Tanjore was an Act of State over which the civil Courts could not sit in judgment. Where however the Government does not purport to act arbitrarily or in its capacity as the sovereign power but does an act under the colour of legal title, the act is liable to be adjudicated upon by the ordinary Courts of the realm in the same manner as claims between private parties. It was thus held in a recent case from Lahore that stolen property which was recovered from an accused in a criminal case but lost while in the custody of the police could form the subject-matter of a civil action and the Secretary of State could not claim exemption on the ground that it was an Act of State. In this case the act was done not in exercise of the absolute and extraordinary power of the sovereign but was done under colour of the Criminal Procedure Code.[11] An act done in pursuance of the right of conquest or in accordance with the sweet will and pleasure of the Government and their notions of what is just and reasonable or one done on political considerations of state cannot be interfered with by the Courts. Also acts done by the Officers of Government in exercise of the powers committed to them for administrative purposes and acts done by the Government in the exercise of the Sovereign powers of making peace and war or of concluding treaties do not fall within the province of Municipal Law.[12]

10. Privy Council on Acts of State.—In a Privy Council case that went up from Nigeria, their Lordships expressed themselves thus with reference to an Act of State. 'The phrase is capable of being mis-

(11) *Uma Pershad* v. *Secretary of State*, 1937 Lah. 572=18 Lah. 380.

(12) *Secretary of State for India in Council* v. *Hari Bhanj*, 5 M. 273 at 278 and 279.

understood. As applied to an act of the sovereign power directed against another sovereign power or the subjects of another sovereign power not owning temporary allegiance in pursuance of sovereign rights of waging war or maintaining peace on the high seas or abroad it may give rise to no legal remedy. But as applied to the acts of Executive directed to subjects within the territorial jurisdiction it has no special meaning and can give no immunity from the jurisdiction of the Court to inquire into the legality of the act.'[13] A Court cannot enquire into the legality of acts of a foreign Government against its subjects in respect of property lying within the limits of its own territories.[14] Justice Mirza in a Bombay case laid down three exceptions in respect of which the Secretary of State could be made liable although they were acts of State, *viz.*, (1) trespass to immovable property, (2) an obligation imposed by a statute, and (3) a case where benefit has resulted to the Government from a tort of its servants.[15] The same learned Judge drew a distinction between an Act of State and an executive Act. An Act of State as generally understood is a term which is not applicable to an action of the Sovereign towards its own subject in its own territory in times of peace. The expression is usually applied to an action of the Sovereign towards foreign subjects whether it be in time of war or in times of peace. There can be

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(13) *Eshug Bayi Eleko* v. *Officer Administering the Government of Nigeria and another*, 1931 P.C. 248=61 M.L.J. 975=35 C.W.N. 755.

(14) *Princess Paley Olga* v. *Weitz*, (1929) 1 K.B. 718=98 L.T. K.B. 465=141 L.T. 207, quoted in *Chaturbhuj* v. *Chunilal*, 1933 P.C. 150.

(15) *Municipal Corporation, Bombay* v. *Secretary of State*, 1934 Bom. 277.

an Act of State as between the Sovereign and its own subjects, in times of war. It would be a misnomer to call the administrative acts of a sovereign against its own subjects, in times of peace as acts of State and to claim immunity in respect of them, although they may amount to a contract in the ordinary sense between the sovereign and his subject.

In a Privy Council case reported in *In the matter of Cargo Ex Steamship Oscar*,[16] it was pointed out that the Royal Prerogative is not involved in the captures made at sea in times of War or in the incidents thereof. The captures are made in the belligerent rights of the Crown which consist in the authority to seize the property of neutrals at sea in times of war subject to certain conditions and under certain circumstances. Subject to condemnation in Prize, the capture is for the Crown's benefit and the captors partake in the fruits of the prize by the bounty of the Crown. Corresponding to the advantage of the Crown it is subject to certain responsibilities one of such being that the property seized should be brought before a Court of Prize for adjudication and pending such delivery of the property into a Court of Prize the duty is cast on the Crown of safeguarding the same from injury. As Their Lordships put it, 'If the Crown be pleased to seek the exercise of the Court's jurisdiction for condemnation, it is in itself a submission to the exercise when justice requires it of its correlative jurisdiction to make an order for damages if the claim for condemnation fails. This is in itself a matter of practice and procedure for it is a part of *cursus curiae*, rules or no rules'.

(16) *In the matter of Cargo Ex Steamship Oscar*, 1920 P.C. 236.

CHAPTER V.

Equitable Construction.

1. The word equitable construction has sometimes been used with reference to the construction of statutes both in England and in India. If it means a construction which is consonant with the object of the Act and one intended to carry out the real intention of the Legislature there can be no quarrel in applying it.[1] Even in England where it was once resorted to make up for the difficulties arising on account of the bad draftsmanship of Parliamentary legislation it has not only been discarded but characterized as positively dangerous.[2] That all statutes opposed to sound reason and natural justice are invalid and of no effect is no longer true as notions of soundness of any reason or the naturalness of any justice must depend upon a number of circumstances which vary from country to country and place to place. The best that can be said about such a construction is that in all cases wherever it is possible to do so, one should attempt to give a reasonable construction to the words in a statute so as to fulfil the object with which the statute is enacted and the true intention that actuated the framers thereof in passing it. In *T. Nagabhushanam and others* v. *S. Ramachandrarao and others*[3] the Madras High Court has definitely expressed the opinion that it had always set

(1) *See* Maxwell, 8th Edition, p. 222.

(2) *Ibid.*, p. 224.

(3) 1923 M. 241=45 M. 237.

its face against equitable construction of statutes and refused to apply any such doctrine to cases to which S. 54 of the Transfer of Property Act applied. It was observed that the provisions of that section were imperative and Courts would not under any circumstances be justified in disregarding the same on equitable grounds.[4] A different note was struck however by Schwabe, C.J., in the Full Bench decision in *Vizagapatam Sugar Development Company* v. *Muthu*[5] and other decisions that followed it placing reliance largely on *Md. Musa* v. *Agore Khan Ganguli*.[6] The Full Bench in effect held that neither the provisions of the Transfer of Property Act nor the Registration Act precluded the doctrine of part performance as laid down in *Md. Musa's case*. But the Privy Council has finally set the controversy at rest in *Khan Bahadur Mian Pir Buse* v. *Sardar Mahomed Tahar* by laying down that prior to the enactment of S. 53-A of the Transfer of Property Act the doctrine of part performance had no application whatsoever in India and in a very recent case *A. Muthuswami Iyer and another* v. *P. B. Loganadha Mudali and others*[7] Justice Varadachari had occasion to point out that even if at the date of the suit by the legal owner the defendant in possession had an enforceable contract of sale in his favour he cannot rely upon it as a defence to a claim in ejectment and that he could at best only apply for a stay of the ejectment suit till he obtained specific performance of his contract in proper proceedings. It was

(4) *Karri Veera Reddi* v. *Karri Bapireddi*, 29 M. 336 (F.B.).
(5) 46 M. 919=1924 M. 271=45 M.L.J. 528 (F. B.).
(6) 42 C. 801=28 M.L.J. 548=42 I.A. 1 (P.C.).
(7) 1935 M. 404.

held on similar grounds by the Patna High Court that statutes of Limitation were in their nature strict and inflexible and were not susceptible of an equitable construction and the exceptions made in the case of a minor, lunatic or idiot could not be extended to an idol though as pointed out by Justice Devadoss there were equitable considerations which pointed to a necessity in the change of the law by legislation.[8] Similarly undue influence the imprisonment or the wrongful confinement of a plaintiff or the closure of Courts on account of a rebellion cannot extend the period of limitation.[9] There have been cases however, where Courts have extended time and granted relief against forfeiture where a deposit has been required to be made by a particular day but the time extended later on equitable grounds.[10] It has been laid down in *Surendra* v. *Souravini*[11] that if the doing of an Act required to be done by a particular date is impossible of performance on the last day fixed for no fault of the party it would be deemed to be properly done on the next day. On similar grounds Courts have exercised the right to extend time for furnishing security before as well as after the time fixed by it has expired and in cases of specific performance especially the Court has always exercised the right to extend time for performance till the right is extinguished by an application presented for the closure of that time and the extinguishment of that right.

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(8) *Ramareddi* v. *Rangadasan*, 1926 M. 769=49 M. 543.

(9) *Raja of Ramnad* v. *Arunachalam*, 38 M. 321.

(10) *Dabee Rawoot* v. *Heeramun*, 8 W.R. 223 (228), also *Husain Ali* v. *Donrene*, 5 Cal. 906, *Aravamudu* v. *Samiyappa*, 21 M. 385 at 387.

(11) *Surendra Narain Mustabi* v. *Souravini Dasi*, 10 C.W.N. 535.

2. **Court's power to extend time.**—In a leading case of the Madras High Court, Schwabe, C.J., laid down the law regarding the power of Court to extend the time fixed for payment under a decree for specific performance. 'No form for a decree for specific performance is provided by statute or by rule here, and it has been left to the Courts to devise a suitable and appropriate form. Specific performance is an equitable remedy which has been known and used by the Courts of Chancery in England for centuries and appropriate forms of judgment have been approved by learned Equity Judges in England and have now become almost stereo-typed; and those at present in use will be found set out in Seton on Judgments under the title specific performance. On a perusal of them the first thing to be observed is that none of these forms contained in the first instance a limit of time for payment of the purchase money by a certain date as condition of the continuance of the rights under the judgment. After the judgment for specific performance it is the definite practice in England that all consequential relief by reason of any party failing to comply with the terms of the judgment must be sought by application to the Court by which the judgment was passed; such applications are made by motion in the action showing that in England after the original judgment the action is by no means ended but remains under the control of the same Court. If the default is made by the purchaser in paying the purchase money there are several remedies open to the vendor. (1) He may on motion in the action obtain an order fixing a definite time and place for payment and delivery over of the conveyance and title deed and can after the expiration of that time levy execution for the amount if not paid.

"It would seem to be absurd to hold that the mere fact that a date of completion is fixed in the original decree put an end to the action and that the control of the original Court expires on the expiration of that date and thus substitutes in effect for all the known remedies stated above the simple expedient of treating the action and the decree as dead for all purposes and leaving the vendor in undisturbed possession of property which is not his and may as in the present case be of a greater value than the contract purchase money which, perhaps by accident the purchaser has failed to produce on the date fixed."[12]

(12) *Abdul Shaker Saheb* v. *Abdul Rahiman Sahib and another*, 44 M.L.J. 107=46 M. 146, followed in *Metta Rama Bhatlu* v. *Annayya Bhatlu*, 49 M.L.J. 152; and in *Mahommed Ali Saheb* v. *Abdul Khadir Saheb*, 59 M.L.J. 351.

BOOK IV.

EFFECT OF LEGISLATION:

CHAPTER I.

Effect of Amendment of Statutes.

1. Amendment does not necessarily involve a change.— The Privy Council has laid down in *Minister of Railways and Harbours of the Union of South Africa* v. *Simmer Jack Proprietary Mines, Ltd.*,[1] that it is not a legitimate interpretation of a mere amending provision to hold that a complete alteration of the principal law is intended to be effected thereby. The mere comprehensiveness of the words used in an Amending Statute does not of itself indicate a desire to effect a radical change the general presumption being against an alteration of the law beyond what the language unmistakably points out. In the above case it was pointed out that the amendment being directed primarily to regulate future operations could not be read as conferring a power to undo the result of past operations which were quite regular and proper when they were carried out and constituted no breach of the existing law. Effect could be given to the words of the Ordinance so as to keep it strictly prospective and render it unnecessary to make it retrospective in effect. An Amending Act should as far as possible be construed in a manner that is consistent with the principal Act which it seeks to amend unless both the object of the amendment and the language employed to effectuate it indicate that a change in departure from the existing law was intended as a matter of fact. A subsequent Act ought not to be construed so as to take

(1) 1918 P.C. 161.

away, the rights and privileges conferred by an earlier statute unless the provisions make it clear beyond doubt. It was accordingly held that a provision in the Amending Act I of 1907 amending the Bengal Tenancy Act preserving occupancy rights did not lead to the inference that other rights were deliberately destroyed.[2] It was held that the expression *expressio unius est exclusio alterius* could not be invoked so as to extinguish the rights of non-occupancy ryots by implication.

2. **Amendment not to be construed retrospective generally.**—An amendment where it does effect a change of the law ought not to be construed to have a retrospective effect. *Vide* section 6 of the General Clauses Act, (X of 1897). It was held in the Calcutta case cited above[2] that if a repealing Act cannot extinguish rights arising under the repealed Act much less could that be the case under an Amending Act. It was held in another case in the Allahabad High Court[3] that section 16-A of the Bundelkhand Alienation Act which deals with a right of pre-emption could not by implication be repealed by section 7 of the Agra Pre-emption Act, 1922, which states that nothing in that Act shall confer a right of pre-emption on any person who under the Bundelkhand Alienation Land Act, 1903, is not entitled to purchase property in dispute. The latter was not intended to create a right of pre-emption in any person who was not entitled to purchase property in Bundelkhand and did not take away the right of pre-emption of a person who had such a right under the old Act. Section 16-A of the Bundelkhand Alienation Act merely

(2) *Shiba Kali Kumar and others* v. *Chuni Lal Chatterjea*, 1927 C. 748.

(3) *Phool Chand* v. *Ram Nath*, 1928 A. 186.

placed the obstacle of sanction in the way of suing when such a right existed.

3. Amending statutes may be merely prospective in operation or may be retrospective and this depends upon whether they deal with vested rights or rights relating to procedure. The language in each case determines the scope of the amendment. In a case arising under the C. P. Tenancy Act, 1898, S. 41 (1) according to which the devolution of occupancy rights was governed by the rule of inheritance and where the law was later amended by Act I of 1920 it was held that the earlier Act applied and not the later Act.[4] There was no reason to think, it was stated that the older law repealed by the later Act was of the same nature as the repealing enactment. Where the right to file an application under Article 176 of the 1st Schedule to the Limitation Act, 1908, existed for a period of six months and before the expiry of the period, Act XXVI of 1920. The Indian Limitation and Civil Procedure Code Amendment Act had come into force on 1st January, 1921 and as a consequence of the amendment the period of limitation was reduced to ninety days it was held that notwithstanding the amendment the right which accrued due on 19th November, 1920, was open to the applicant and was not taken away by the amendment.[5] In like manner in *Brajatall Dutta* v. *Kevaram Pal*,[6] it was held that the promulgation of an Amending Act cannot without express terms take away from a party rights vested in him under a prior Act. The case was one under Chota Nagpur Tenancy Act, which related to substantive rights

(4) *Mulchand* v. *Chandrasing and another*, 1926 N. 433.
(5) *Ajit Sing* v. *Bhagabati Charan Mukherjea*, 1922 C. 491.
(6) 50 I.C. 515.

and not merely rights of procedure and as one infringing substantial rights of a subject it could not be deemed to be retrospective.

4. **Cases of mere Procedure.**—On the other hand where the Civil Procedure Code of 1908 effected a change merely in the procedure the right under the old Code being kept up and only a new remedy granted under Order 33, Rule 12 of the later Code it was held open to the Government to make an application for directing the payment of court-fee in the case of a pauper suit and secure an order according to law under the new Code.[7]

5. A mere description of the Act as an Amending Act however, was held not to be conclusive to determine its real nature. It may be merely reaffirming, repealing or explanatory. In *Balaji Sing* v. *Chakka Gangamma and another*,[8] it was pointed out that the mere fact that Act XXVII of 1926 was called an Amending Act did not change its complexion as a really Declaratory or Explanatory Act, and that in all cases where an Amending Act gives an authoritative explanation of the words, phrases or clauses used in a statute the explaining statute has to be applied whenever the main statute comes up for interpretation. The Amending Act XXVII of 1926 was passed to declare what the meaning of the word 'attested' is and not to alter the law. (For a fuller discussion of the retrospective nature or otherwise of Amending Statutes, *vide*, Book II, Chapter I).

6. **Amendments Recognizing Judicial Interpretation involve no change of the Law.**—Where the Amendment effected by a statute, *i.e.*, of S. 92, T.P. Act by

(7) *Secretary of State* v. *Narayan Khasiram Shet*, 35 B. 448=12 I.C. 29=13 Bom.L.R. 686.

(8) 1927 M. 85.

Act (XX of 1929) is merely to reclassify the position of a co-mortgagor redeeming a mortgage debt and assimilating it to that of subsequent mortgagees and other persons specified in S. 92 of the Transfer of Property Act thus recognizing the principle of subrogation, the amendment does not really effect a change in the law but only accords a legislative recognition to judicial construction and no more for it is a well-established rule of interpretation that the Legislature is presumed to know not only the general principles of law but also the construction of particular statutes.[9] Where a decision passed in 1906 was not touched but impliedly approved in an Act of 1925 it was held that the Legislature should be assumed to be aware of such interpretation and intended it to be followed in the later enactment.[10] On similar grounds where the Madras Irrigation Cess Act of 1865 was amended in 1900 after the Madras High Court construed the word 'supply' used in that Act as implying a previous request and the word 'used' as presupposing a freedom to refuse and the Legislature in the Amending Act had enacted the law in the same language as before, it was held that the distinction between voluntary and involuntary enjoyment was intended to be kept up and not wiped out.[11] The same point was decided by the Patna High Court in *Harnanand Rai* v. *Baliram*,[12] where it was laid down that where there were decided cases before the amendment of an Act and the amendment did not bear any indi-

(9) *Jairam* v. *Bhalaji*, 1930 N. 300.

(10) In the goods of *Sarah Ezra (Deceased)*, 1931 C. 560 See also *Nagar Damodar Shanbogue and others* v. *Ganga and others*, 1938 M. 638 at 640.

(11) *Kanniappa Mudaliar* v. *The Secretary of State for India in Council*, 59 M. 107=69 M.L.J. 728=1936 M. 42.

(12) 1931 Pat. 1.

cation of an attempt to alter the law it may be presumed that the rule laid down by the judicial decisions is intended to be adhered to. As their Lordships put it 'where there have been a series of decisions under the old Code in support of the view that a subsequent suit for future mesne profits is not barred, and when it is clear that in spite of these decisions, the Legislature did not make any clear provision in the new Code to the effect that such a suit would be barred: I am inclined to think that we must follow the old decisions and hold that the suit (for subsequent mesne profits) is not barred. . . . . If the legislature wanted to effect a change it would have been done more directly and more effectively than by a mere readjustment of old provisions as is found in the new Civil Procedure Code. Unless an express change of law is indicated, it cannot be assumed that it was intended to bar a suit for future mesne profits claimed but not expressly granted.' Similarly a fair presumption was drawn from the language of the Limitation Act of 1908 which reproduced the language of Article 116 of the prior Act after the said Article was the subject-matter of judicial discussion, that the Legislature accepted the old view.[13] Even when there is a change in the wording of the section of an enactment it does not necessarily involve a change in the law as amendments are often made to clear up ambiguities and amendments intended to prevent misinterpretation cannot be said to be altering the law.[14] As pointed out by Wallis, C.J., in *Govinda Iyer* v. *Emperor*,[15]

(13) *Sahu Radha Krishna* v. *Tej Saroop and others*, 1930 All. 69 (F.B.). See also *Sabha Chand and others* v. *Piare Lal*, 11 Lah. 481=1930 Lah. 764 (F.B.); *Bipul Behari* v. *Nikhil Chandra*, 1929 Cal. 566.

(14) *Secretary of State for India* v. *Purnendu Narayan Roy*, 17 C.W.N. 1151 (1156)=40 Cal. 123=18 I.C. 939.

(15) 36 M.L.J. 448=42 M. 540=9 L.W. 422 (F.B.).

where sections are repealed and re-enacted in a slightly different form, there is a presumption against implied alteration unless the language shows there is intended to be an express alteration. It was thus held by the Full Bench in the above case that the words 'any offences' referred to in S. 195 and in S. 476 of the Code of Criminal Procedure refer not merely to the offences mentioned in S. 195 but also incorporate the conditions laid down in that section for taking cognizance of the offences mentioned therein though as pointed out by the referring judges the new restriction was unnecessary or would involve the risk of tautology.

CHAPTER II.

Effect of Repeal of Statutes.

1. **Effect of repeal of a statute is to obliterate it for all purposes.**—The effect of the repeal of a statute or any of its provisions is as though it had never existed except in regard to transactions which had happened or had been completed under the same before its repeal. The statute is for all effective purposes to be deemed to be obliterated from the records of the Legislature as though it were a law that never existed or was in force, an exception being made as aforesaid in regard to proceedings which had commenced, became part heard or concluded during the time it had the force of law.[1] This applies with equal force whether the statute repealed is of substantive law or merely one relating to procedure. In either case it loses its force as a prevailing statute and becomes a dead law from the moment of its repeal. Persons who might have committed offences when a criminal law was in force cannot be convicted after it is repealed and a plea that might be open when an Act permitting it was in force cannot be taken after its definite repeal except in cases where the statute contains language to the contrary. The effect of the repeal of a clause is as stated *supra* the same as the repeal of a statute so far as the clause is concerned and the law relating to repeal of statutes applies *mutatis mutandis* to the repeal of any of its provisions.

(1) *Surtees* v. *Ellison*, (1829) 9 B. & C. 750, *per* Lord Tenterden, C.J., *Kay* v. *Goodwins*, (1830) 6 Bing. 576 at 582 and 583; also *Attorney-General* v. *Lamplugh*, (1878) 3 Ex. D. 214 at 217.

2. Effect of repeal of a provision on unrepealed provisions.—The effect of the repeal of a clause on other clauses of a statute not repealed sometimes comes up for consideration in the interpretation of statutes. In such a case the correct rule of interpretation depends upon the relation in which the repealed provision stood to the remaining parts of the statute. It is not correct to say in such a case that the repealed clause cannot be looked at for any purpose whatsoever. If the thing to be considered is the meaning of the clause when it was enacted and if the presence in the statute of the subsequently repealed clause controlled and governed the meaning of the remaining provisions at the time the Act was originally passed it would still be open to the interpreter to look at the repealed provision after its repeal to construe the rest of the Act which was so dependent on the repealed clause for its true meaning. The reason of the rule is that the facts existing at the time the Act was passed have to be looked to to arrive at a correct conclusion regarding the meaning of its provisions at the time it was passed. When two Acts are interdependent in the sense that the meaning of the one depends upon the other and where one of the Acts which determines the construction of the other is repealed the repeal of the former does not make it improper to refer to it in construing the latter Act. The meaning and interpretation of an Act are settled once for all at the time it is passed and the same cannot be altered by the repeal of any part of it at a subsequent date.[2] In a case of incorporation of the provisions of one statute by reference, in those of another, the repeal of the statute

(2) *Parker* v. *Talbot*, (1905) 2 Ch. 643 at 655=75 L.J. Ch. 8 at 13.

from out of the provisions of which incorporation is made keeps the original statute in force so long as that forms part of the second enactment in spite of the repeal of the earlier enactment.[3]

3. **Effect of repeal under the General Clauses Act.**— S. 6 of the General Clauses Act (X of 1897) summarises the effect of the repeal of a British Indian Act or Regulation of the Governor-General in Council made after the commencement of that Act. The Act applies to repeal of enactments passed prior to it as well as subsequently. The repeal does not revive anything that is not in force at the time it takes effect. It does not affect the previous operation of any repealed enactment nor anything legally done or suffered under the same. It does not touch past transactions validly done under the repealed Act, *i.e.*, the rights acquired, privileges accrued, or obligations or liabilities incurred under the same before its repeal and it continues to have the same force as though the repeal had not taken place. Where an offence is committed in regard to such an enactment before its repeal any penalty, forfeiture or punishment incurred under it becomes payable or continues to be capable of being meted out even after the repeal and the enactment has no retrospective effect even as regards, the procedure followed in enforcing such rights or obligations. The repeal does not affect any 'investigation, legal proceeding or remedy' in regard to any 'right, privilege, obligation, penalty, forfeiture or punishment' in whatever state it may be and the institution, continuance or enforcements of all rights and obligations acquired or incurred under the repealed Act are preserved to the parties interested in the same. It

(3) *R.* v. *Stock*, 8 A. & E. 405.

further allows the imposition of penalties, the effecting of forfeiture and meting out punishment permissible under the Repealed Act or Regulation even after such repeal. The provisions of S. 6, however, are subjected to exceptions in cases where the statutes themselves contain clauses tending to a contrary effect from that enunciated in S. 6 and in cases where such intention is clearly expressed in the Repealing statute itself. The language of S. 6 should be strictly construed and becomes applicable only to cases where there is an actual repeal.[4] The rights or privileges that are saved are only those that become vested in individuals prior to the Repeal.[5]

4. Revival of repealed enactments.—S. 7 deals with the revival of repealed enactments. Such a revival can be effected only by express language whether the revival be of a part or whole of a statute of the Governor-General passed after 3rd January, 1868 and of Regulations after the 14th of January, 1887 or any Act or Regulation passed after the General Clauses Act which came into force from the 11th of March, 1897. The mere repeal of a repealing Act or the repealing part of a Repealing statute does not of itself revive the original Act or the repealed portion of such statute.[6] In this respect the Indian law follows the English law prevailing subsequent to 1850.[7]

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(4) *Hemandas* v. *Chellaram*, 13 I.C. 264=5 S.L.R. 184; *Jogodanund Singh* v. *Amrita Lal Sirkar*, 22 C. 767 (F.B.).

(5) *Jageshar Singh* v. *Bhagwan Baksh Singh*, 9 I.C. 337=14 O.C. 10; *Chote Lal* v. *Tula Singh*, 1926 P. 561=97 I.C. 608=8 Pat.L.T. 397; Also *Krishna Dayal Gir* v. *Sakina Bibi*, 34 I.C. 27=20 C.W.N. 952=1 Pat.L.J. 214.

(6) *Srinivasachari* v. *Queen*, 6 M. 336; 7 M.H.C. App. 8.

(7) *See* Maxwell, Interpretation of Statutes, 7th Edition; page 343; Interpretation Act, (C. 63), S. 11.

5. **Reference to repealed enactments.**—S. 8 deals with cases where references to repealed enactments are found in a current statute and their effect has to be construed. Where the General Clauses Act itself or any Act or Regulation of the Governor-General in Council passed thereafter repeals and re-enacts with or without modifications any provision of a former enactment, the references in any other enactment or in any instrument to the provision so repealed shall unless a different intention appears be construed as reference 'to the provision so re-enacted' and the same rule applies where the provisions in a Parliamentary statute are referred to in those of the Governor-General in Council.[8]

6. **Repeal has no retrospective effect.**—As in the case of amending statutes so also in the case of repealing statutes, no retrospective effect can be given to their provisions so as to affect vested rights and so it was held in one case that impossible conditions could not be imposed on pain of forfeiture of a vested right.[9] The same was held in a Madras case.[10]

7. **Effect of Repeal under Indian Law.**—The effect of repeal of a provision was considered in a recent case in *Digambar Paul Ghosh and others* v. *Tufa Zuddi Ijardar and others*.[11] Section 48 of the Bengal Tenancy Act was repealed and a new S. 48 was substituted in its place by Act IV of 1928 the effect of the change being that whereas under the old section the landlord was not entitled to collect from the under-raiyat more than 50 per cent. in excess of what he himself paid, under the

(8) *Vide* General Clauses Act, Appendix.

(9) *Makar Ali* v. *Sarfaddin and others*, 1923 C. 85.

(10) *Manika* v. *Chinnappa*, 1912 M.W.N. 811=36 M. 557=16 I.C. 1002=23 M.L.J. 641.

(11) 1934 Cal. 80 (2).

new section he was entitled to collect rent as agreed upon between both at the time of the admission of the raiyat. The question that cropped up for consideration was whether in an action for rent for a period prior as well as subsequent to the repeal and re-enactment, the old or the new rate should prevail. It was held that the rent prior to Act (IV of 1928) was payable at the old rate while rent subsequent to the same was payable under the terms of the altered S. 48. It was stated that the effect of the repeal of a statute in the absence of any saving clause was that it has to be considered as if the statute so repealed had never existed. 'It ceases to be operative, unless there is any clause in the new statute preserving the old statute the underlying principle being, that there cannot be two inconsistent codes in the same matter and if the previous statute has to be preserved that must be done expressly'.[12]

8. **Repeal by Implication.**—The above rules apply as stated *supra* where there is a clear case of repeal and where the language itself expressly effects the repeal. Cases of repeal by implication present more difficulty and it has to be examined in each case what is the extent of the repeal effected by the language. The first principle to be remembered in all such cases is that before holding that one Act repeals another by implication the provisions of the two Acts must be shown to be inconsistent with each other and so repugnant that they cannot stand together and are incapable of reconciliation on any fair or reasonable construction of both of them.[13] Thus not only is there no presumption in favour of repeal

(12) *Watson* v. *Winch*, (1916) 1 K.B. 688=85 L.J.K.B. 537=114 L.T. 1209=80 J.P. 149.

(13) *Keshub Nag Muzumdar* v. *Madhusudan Pal Kundu*, 6 I.C. 685.

by implication but on the other hand very strong grounds are required to construe such a repeal, such as would make it impossible or inevitable for the Courts to come to a different conclusion consistent with the language of the statutes. The presumption against the repeal of a statute without express language to that effect is as strong as the presumption against attributing to the Legislature a desire to keep two contradictory statutes on the statute Book. For, it often happens that there is no real conflict between two statutes the language of which may be apparently contradictory and each of them may be capable of proper explanation and understanding with reference to the subject dealt with in each case or the object with which the same was enacted. Or more usually both statutes can stand without the one doing violence to the language of the other. They may be complementary of each other. One might apply to a class the other to an individual or individuals.[14] One might be designed to protect the health and other interests of the consumer the other might be directed towards preventing fraud on the revenue laws.[15] Again one may express the general rule and the other might be treated as an exception.[16] A Maxwell points out[17] two statutes expressed in negative terms may be 'affirmative *inter se* and not mutually contradictory though they may be negative in relation to a third statute against which they may be each aimed'. As the learned author points out 'they may make two holes in the earlier Act which can stand side by side

(14) *Proctor* v. *Manwaring*, 3 B. & Ald. 145. *See* Maxwell. Interpretation of Statutes, p. 145 (7th Edn.).

(15) *Attorney-General* v. *Lockwood*, (1842) 9 M. & W. 378.

(16) *Churchill* v. *Crease*, 5 Bing. 180; also *De Winton* v. *Brecon*, 28 L.J.Ch. 600.

(17) *See* Maxwell, Interpretation of Statutes, p. 147 (7th Edn.).

without merging into one'.[18] Equally possible is it that the two later Acts where they are affirmative might be 'consistent affirmative Acts' without in any way repealing the law embodied in the earlier statute.[19]

9. **Effect of Incorporation of Provisions in Indian Law.**— The effect of the repeal or amendment of an earlier Act incorporated into another Act so far as the latter Act is concerned came up for consideration in a Privy Council case arising under the Calcutta Improvement Act (Bengal Act V of 1911)—designed for the acquisition of land by Trustees appointed under that Act for that purpose. That Act contained provisions of the Land Acquisition Act which were incorporated into the body of the Act as well as a Schedule attached to it and the said Tribunal was constituted by S. 71 of the said Act a Court for all purposes of that Act except so far as it related to the provisions of S. 54 of the Land Acquisition Act which authorized an appeal to the High Court. Section 71 thus excluded an appeal to the High Court and also gave a finality to the decisions of the Tribunal under the Calcutta Improvement Act. Simultaneously with the passing of the Bengal Act, the Council of the Governor-General of India passed Act (XVIII of 1911) modifying the provisions of the Calcutta Improvement Act so as to enable an appeal to the High Court subject to some limitations against a decision of the Tribunal in the solitary case of a decision which the President of the Tribunal constituted under the Act certified as a fit one for appeal to the High Court, this simultaneous passing of two Acts one by the local Legislature and the other by the Indian Legislature being

(18) *Clack* v. *Sainsbury*, 11 C.B. 695.

(19) For detailed illustrations, ref. to pp. 144 to 152, Maxwell, Interpretation of Statutes (7th Edn.).

rendered necessary on account of a technical difficulty arising in the passing of a valid Act affecting the right of appeal to the Calcutta High Court by the local Legislature. It would be noticed however, that apart from the fact that the right of appeal to the High Court was circumscribed by special limitations no right of appeal to the Privy Council was provided. Subsequent to the above legislation and nearly ten years afterwards, the Indian Legislature passed an Amending Act (XIX of 1921) by which a new section was added to the Land Acquisition Act of 1894 under which every award of the Court was to be deemed a decree and the statement of grounds a judgment within the definition of those terms under the Civil Procedure Code of 1908 and also a new section was substituted for S. 54 of the same Act whereby a right of appeal to His Majesty in Council in terms was granted from any decree passed by the High Court on appeal from an award under the Act. The contention put forward on behalf of the Secretary of State, the appellant in the above case was that having regard to S. 26 (2) introduced into the Land Acquisition Act by Act (XIX of 1921) making every award a decree, the same should be read with the Calcutta Improvement Act with the effect that every award of the Tribunal also should be deemed to be a 'decree' within the meaning of the Civil Procedure Code of 1908 and *ex vi termini* appealable to His Majesty in Council under the Letters Patent of the High Court. The amendment of the Land Acquisition Act much later in date to the original Act was claimed to operate upon the Calcutta Improvement Act and impliedly provide for an appeal to their Lordships of the Privy Council. Their Lordships, however, repelled the argument on two grounds. In the first

place as their Lordships observed the argument put forward, if valid, would render the amendment of S. 54 of the Land Acquisition Act by which a right of appeal to the Privy Council was given in express terms wholly superfluous and 'the somewhat strange result would follow that though the provision of the Amending Act by which a right of appeal to the Privy Council is given' is excluded in the case of awards by the Tribunal they were nevertheless so appealable by implication from another statute, which was clearly untenable. A subsection which was only passed in 1921 could not be regarded as incorporated in an Act which was passed in 1911. The new section was not part of the Land Acquisition Act when it was passed and it was certainly unreasonable to suppose that the Bengal Legislature bound itself to any possible future additions to the Land Acquisition Act even though they might be unsuitable to the local Act passed by it. The retention of S. 71 of the Bengal Act which clearly recited that the Tribunal under the local Act was not a 'Court' for purposes of S. 54 of the Land Acquisition Act clearly negatived the contention that it could become a Court by the implied application of the extended provisions of the Land Acquisition Act of a much later date. Besides Act XIX of 1921 was not retrospective in effect and was not intended to affect the provisions of any Act other than the Land Acquisition Act. There being no guiding principle in the General Clauses Act in regard to the point in question a reference to the English principles of interpretation was made and their Lordships arrived at the conclusion that when a statute is incorporated by reference into a second statute the repeal of the first does not affect the second. Support for the position taken up by their Lordships was also drawn from the

usual form in which Amending and Repealing Acts are generally couched in India.[20]

10. The above authoritative pronouncement of the Privy Council establishes the rule of interpretation obtaining under the English Law and is held to be equally applicable to the construction of Indian statutes, *viz.*, that where there are two Acts one a parent Act and the other its offspring it is quite possible and permissible that each of them can exist independently without the death of the parent Act necessarily involving the extinction of its offspring. The incorporation of the provisions of an existing statute into a subsequent Act has not the effect of extending the amendments or alterations made in the earlier Act into the later Act except where there are express words enjoining such a procedure more specially where it is perfectly permissible for the subsequent Act to function effectively without such addition.

11. **Illustrations from a recent case.**—In a recent case more familiarly known as the Anti-Hindi Propaganda League case[21] the Madras High Court had to consider the effect of the repeal of the Criminal Law Amendment Act, 1932 by Act (XX of 1937) known as the Repealing and Amending Act, 1937. The original Criminal Law Amendment Act (XXIII of 1932) which made 'picketing' an offence came into operation on 19th December, 1932. Section 1 (3) of the Act provided for its continuance only for a period of 3 years. The whole of the Act except Ss. 4 and 7 thereof were made applicable immediately to the whole of British India but it was provided that Ss. 4 and 7 were to be brought into effect in the

(20) *Secretary of State* v. *Hindustan Co-operative Insurance Society*, 1931 P.C. 149=58 I.A. 259=59 Cal. 55=61 M.L.J. 864 (P.C.).

(21) In re *Swami Arunagirinatha*, 1939 M. 21.

several provinces as and when the Local Government decided to apply them. The Government of Madras decided to apply S. 7 to the whole of the Presidency on the 27th December, 1932 and issued a notification to that effect ultimately on 4th January, 1933, in the Gazette, dated 10th January, 1933. The Criminal Law Amendment Act, 1935, passed into Law by the certification of the Governor-General repealed some sections of the Act of 1932 but not S. 7 which dealt with 'picketing'. S. (1) (3) of the Act of 1932 which limited the duration of the Act to 3 years was repealed and the Act was thus made a permanent one. Act (XX of 1937) repealed the Act of 1935 but S. 4 of the Act of 1937 provided that the repeal by that Act (*i.e.* of 1937) of any enactment shall not 'affect any Act or Regulation in which such enactment has been applied, incorporated or referred to'. It was contended in the above case that the Act of 1935 having been repealed by Act (XX of 1937), the Criminal Law Amendment Act, 1932, should be deemed to have been restored to its original position and was of no avail in 1938 as it was brought into existence for three years only. The argument was repelled by Abdur Rahman, J., who pointed out that the Act of 1935 having been brought into existence with the object of repealing S. 1 (3) of the Criminal Law Amendment Act, 1932, and making it a permanent statute instead of a temporary one as it was before the repeal, achieved that object and the Act of 1935 was no longer of any use and was on that account repealed in 1937 and that all doubts, if there were any, were removed by S. 4 of the Act of 1937 reserving the effect of prior Acts or Regulations. Reliance for this position was also placed on S. 6-A of the General Clauses Act, 1897, added by Act (XIX of 1936) which laid down that where there was a repeal of

any enactment by which the text of any Act of the Governor-General in Council was amended by the 'express omission, insertion or substitution of any matter' then unless a different intention appeared the repeal was not to affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal'.

CHAPTER III.

Effect of Earlier on later Statutes and *Vice Versa*.

1. **Mutual effect of earlier and later statutes.**—The next subject to be considered is the effect of later statutes on earlier ones and *vice versa*. It has already been pointed out that in the absence of language definitely pointing to the contrary, effect should be given to both of them and an attempt should be made to reconcile them as far as possible without actually straining the language. When a later Act of the Legislature does not purport or affect to supersede an earlier Act the Court should endeavour to read them together and avoid a conflict between them.[1] As has been forcefully put in one of the English cases quoted with approval by the Indian High Courts, 'if anything is certain, it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation is indirectly repealed, altered and derogated from merely by force of general words without any indication of any particular intention to do so'.[2] Where the words of an earlier statute are re-enacted in a later statute there is no difficulty as it may be assumed that in such a case it was intended that the law should be continued as it previously existed.[3] The rule of construction '*leges posteriores priores contrarias abro-*

(1) *Ranga Charya* v. *Dasacharya*, 37 B. 231.
(2) *Seward* v. *Vera Cruz*, (1884) 10 A.C. 59.
(3) *Narain Sing* v. *Baba*, 44 I.C. 262.

gant'[3-a] 'later laws abrogate prior contrary laws' applies to a reaffirming enactment only when there is such complete repugnancy or contradiction between the earlier and later enactment as renders it almost certain that the Legislature could not have intended that both should stand together and they are so mutually destructive that no reasonably reconciling interpretation of both of them is admissible.[4] On general principles it is not sound to presume that a later Act intends to repeal an earlier Act; either express repeal or positive repugnance to the earlier Act should be discernible in the later Act necessitating repeal by implication.[5] It is not permissible to construe an earlier statute in a particular way on the ground that otherwise a later statute would be a surplusage.[6] The reason of the rule is stated to be that the later Act may have been enacted *ex abundante cautela* to remove possible doubts. *Vice versa* where the words of a later consolidating Act are clear, their effect cannot be cut down by comparison with the language of earlier statutes.[7] Again the mere omission in a later statute of a negative provision in an earlier statute has not the effect of making a substantive affirmation.[8] Their Lordships of the Privy Council state that in such a case one has to see how the law would have stood without such a proviso and the terms in which the repealed sections are substantially re-enacted. Where how-

(3-a) 1 Co. 25.

(4) *Mahomed Abdul Vakab Sahib* v. *Comandur Ramaswami Iyengar*, 4 M.H.C.R. 277.

(5) *Phoolchand and another* v. *Ramnath and another*, 1928 All. 186.

(6) In the matter of *Sir Stuart Samuel*, 17 C.W.N. 735 (P.C.).

(7) *A. Balasubrahmania Chetti* v. *Swarnammal and another*, 25 M. L.J. 367.

(8) *Union Steamship Company of New Zealand* v. *Mary Robin*, 1920 P.C. 140.

ever a new rule promulgated under a statute is to some extent in conflict with the previously existing rule the new rule must by implication be deemed to have annulled the old and if not inconsistent with the old rule it must prevail.[9]

2. **Privy Council view.**—In *the Corporation of the Bank of Australasia and others* v. *The Municipal Council of Sydney*,[10] their Lordships of the Privy Council had to consider the effect *inter se* of the Sydney Corporation Act of 1879 and the Moore Street Improvement Act of 1890 and the liability of the Crown to pay a city rate imposed under the later Act. The earlier Act of 1879 exempted the Crown from liability from paying rates on lands on which there were no buildings whereas under the later Act the owners of property liable to the City rate were made liable to contribute to the Special Improvement Rate imposed by that Act. The construction contended for before their Lordships that 'owners of property liable to the City Rate' should be construed as meaning 'owners of property which now is, or may hereafter be liable to the City Rate' was negatived and the contention that though the Crown was not originally liable the purchasers from the Crown were liable to pay such a rate was also negatived as their Lordships held that such a contention was inconsistent with Ss. 5, 6 and 7 of the Act of 1890 and that assessments made under the Act of 1890 must be made once for all according to the facts existing at the time of the Act and there was nothing in the Act to justify the alterations from time to time according to altered circumstances. If the Crown was not originally liable when the Act

(9) *Shakir Hussain* v. *Chandolall and others*, 1931 All. 567 (F.B.).
(10) 1917 P.C. 222.

was passed a purchaser from the Crown at a later date could not be held liable. The propriety of two Acts standing together was instanced in *Rangacharya* v. *Dasa Charya*[11] already referred to wherein it was held the operation of S. 1 of the Bombay Regulation (V of 1827) was not affected by S. 2 of the Limitation Act (XIV of 1859) as the one related to positive prescription and the other related to limitation. Similarly S. 4 of the Act of 1801 (41 Geo. III, c. 52), disqualifying for a seat in Parliament of the United Kingdom any one making a contract with a Commissioner of His Majesty's Treasury in Ireland or with any other person whatsoever on account of public service in Ireland was not a surplusage in view of S. 1 of Act 22 Geo. III, c. 45 of 1782 which referred to 'any other person whatsoever' after mentioning some persons who held office in the British Government, as the Act of 1801 only enlarged the area of disqualification referred to in the earlier Act and was in no way inconsistent with the construction placed upon the Act of 1782. Under the earlier Act Sir Stuart Samuel was disallowed from sitting or voting in the House of Commons[12] as he was a partner of a firm which made contracts with the Secretary of State for India in Council for borrowing money on short loans for purchase of India Council Bills, Indian Treasury Bills, for subscribing to India Government loans and for purchasing silver for purposes of Indian Currency. Section 37 of Act (XII of 1887) (Bengal, N.W.F. Province and Assam Civil Courts Act) is not repugnant to Regulation (III of 1872) and should prevail as S. 37 of the later Act only empowered the Court to act

(11) 37 B. 231.

(12) *Phoolchand and another* v. *Ram Nath and another*, 1928 All. 186.

according to justice, equity and good conscience in cases not provided for by any other law for the time being in force and Regulation III of 1872 being such a law effect should be given to the same if possible.[13] There was no repugnancy between the general law and the regulation. On the same principle it was held that that the stipend of a Carnatic Stipendiary which was exempted from being proceeded against in execution of a decree by S. 3 of Regulation IV of 1831 extended by Act XXIII of 1838 was not impliedly repealed by Ss. 205 and 237 of the Civil Procedure Code.[14]

3. **Omission of negative provision not an affirmation.**— In illustration of the principle that a mere omission of a negative provision of an earlier statute in a later enactment has not the effect of affirmation may be cited two cases. In the *Union Steamship Company of New Zealand, Ltd.* v. *Mary Robin*,[15] it was held that though the negative provision occurring in S. 62 of the Workers Compensation Act of 1908, *viz.*, that 'Nothing in that sub-section shall affect the measure of damages in an action brought against an employer in respect of the death of a servant' was not reproduced in S. 13 of the Workmen's Compensation Act (Amendment Act) of 1911 (which amended S. 62) the contention that the omission should be assumed to have a definite purport and was therefore removed and that the limitation that the original negative provision was intended to avoid was once more imposed, was negatived on sound principles of interpretation of statutes. On similar grounds

(13) *Debi Prasad* v. *Kusumkumari*, 1930 P. 442.

(14) *Mahomed Abdul Vakab Sahib* v. *Comandur Ramaswami Iyengar*, 4 M.H.C.R. 277.

(15) 1920 P.C. 140.

the omission in S. 141 of the Civil Procedure Code of 1908 of the explanation added to S. 647 of the earlier Code (Act XIV of 1882) by S. 4 of Act VI of 1892 exempting the application of the C. P. Code to execution applications had not the effect of making the provisions of the new Code applicable to such proceedings. The change in the language of S. 647 had not the effect of altering the law.[16] The common law of England which is part of the law of India unless abrogated by any special statute or is inapplicable to Indian conditions enables a landlord to claim damages against a tenant who holds over for breach of contract or to take back peaceful possession of the land notwithstanding the Indian Contract Act and the Transfer of Property Act.[17]

4. In the Anti Hindi Agitation Case already referred to[18] the language of S. 4 of Act (XX of 1937) providing that the repeal by that Act of any enactment shall not affect, any Act in which such enactment has been applied or incorporated, was contended to apply only to the application of an earlier enactment to a later enactment and could not be taken to 'imply, include or contemplate' the alteration of the earlier enactment by the operation of the later, but the same was negatived, and it was held that understanding the language in its ordinary sense, there was no reason to come to a contrary conclusion. It was held to be immaterial whether as a result of subsequent enactment a provision is added to or subtracted from an earlier Act.

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(16) *A. Balasubramania Chetti* v. *Swarnammal and another*, 25 M.L.J. 367=38 M. 199.

(17) *Sunder Mull* v. *Ladhuram Kaluram*, 1924 C. 240.

(18) In re *Arunagirinatha*, 1939 Mad. 21 (29).

CHAPTER IV.

Effect of General on Special Acts and *vice versa*.

1. The general maxim *generalia specialibus non derogant* (General provisions do not derogate from special provisions) has been a governing rule of construction of statutes from the earliest times. They are restrained according to the nature of the things or the person with whom they deal.[1] A general Act ought not to be interpreted as repealing a particular Act except when there is a clear indication to the contrary. It is the same presumption against an implied repeal that applies to the effect of general Acts on special ones. A general later law cannot be construed as repealing an earlier special one by mere implication. As has already been pointed out in an earlier chapter and as Lord Selborne pointed out in *Seward* v. *Veracruz*[2] where a sensible and reasonable application can be given to the words of a general Act without comprehending in its scope the special Act the earlier Special Act ought not to be deemed to be indirectly 'repealed, altered or derogated from' merely on account of the general language employed in the later general Act. The reason of the rule is that the legislature which has given its attention to a special subject and has provided for it in the first instance is not to be presumed to interfere with it when

(1) *Verba generalia restringuntur ad habilitatem rei vel aptitudinem personae* (Bac. Max.)

(2) 10 App.Cas. 68.

it makes a general provision unless it makes a clear manifestation of a contrary intention in the later Act. It is a necessary inference that the Legislature when passing a general Act looks to the general advantage of the community without reference to any special case and gives large and general powers which, it cannot be the intention of the Legislature should override the special provisions of a particular legislation which was passed by it with a due consideration of all its advantages and disadvantages.[3] The rule is thus an exception to the general rule *leges posteriores priores contrarias abrogant* (posterior laws repeal prior ones to the contrary). As pointed out by Lord Hobhouse in *Barker* v. *Edger*,[4] 'The general maxim is *generalia specialibus non derogant*. When the Legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests the intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms.'

2. **What are General and what Special Statutes.**— The same rule has been applied in the construction of British Indian statutes. What is a general statute and what a special statute must often be a question of difficulty to solve in most cases but the classification has to be made with reference to the context in each case and the subject-matter dealt with by each statute. As Justice Ramesam pointed out in *Gunepally Thammayya and others* v. *Sri*

(3) *The London and Blackwall Rail Coy.* v. *The Boards of Works for the Line House District*, (1856) 3 K. & J. 123 at 127; 26 L.J.Ch. 164 at 166.

(4) 1898 A.C. 748 at 754; 67 L.J.P.C. 115 at 118.

Raja Thyadapusapati Khandenda Dora and another[5] most Acts can be classed as general Acts from one point of view and special Acts from another. Thus the Agency Rules framed under the Scheduled Districts Act (Madras Act XIV of 1874) which apply only to a small area comprised in the three districts of Ganjam, Vizagapatam and Godavari are similar to a Local Act and therefore special and the Estates Land Act (Madras Act I of 1908) may be said to be a General Act as it applies to the whole Madras Presidency. From another point of view the Estates Land Act may be termed to be a special Act as it relates to the relationship between landlords and tenants and the Agency Rules a General Act as they do not relate to any particular class of suits but generally to all classes of suits of whatever nature arising in the Agency Tracts. It may be argued in a similar way that the Contract Act, the Specific Relief Act and the Transfer of Property Act though they apply to the whole of India are Special Acts because they relate only to some special branches of law or other. But generally speaking in the application of the rule referred to *supra* the speciality referred to applies more to the speciality in respect of the area rather than the speciality in regard to the subject-matter of the Legislation.

3. Justice Reilly has explained the rule in a case reported in *The Corporation of Madras* v. *Madras Electric Tramways, Ltd.*[6] 'If the Legislature', said his Lordship 'makes a special Act dealing with a particular case and later makes a general Act, which by its terms

(5) 1930 M. 963.
(6) 1931 M. 152.

would include the subject of the special Act and is in conflict with the Special Act, nevertheless unless it is clear that in making the general Act it had the Special Act in its mind and has intended to abrogate it, the provisions of the General Act do not override the Special Act. If the Special Act is made after the general Act, the position is even simpler. Having made the general Act, if the legislature afterwards makes a Special Act, in conflict with it we must assume that the legislature had in mind its own general Act when it made the special Act and made the special Act, which is in conflict with the General Act, as an exception to the general Act.' The conflict in the above case was between two special Acts constituting the Madras Electric Tramways Company and the Madras Electric Supply Corporation on the one hand and the Madras City Municipal Act on the other. The contention was put forward that both the former Acts were special Acts inconsistent with the general Act, the City Municipal Act and hence the provisions of the earlier prevailed and the corporation of Madras was not entitled to the declaration it sought against the two companies formed under the Special Acts that they were subject to the control of the Commissioner of the Corporation under Ss. 287 and 288 of the Madras City Municipal Act. In negativing the contention the court held that so far as the Tramway Act was concerned it was not concerned with the construction of Workshops nor did it authorise the setting up of such Workshops whereas the City Municipal Act, S. 287 required that a license should be obtained by any one who desired to cast metal or to break or hammer iron or to beat metal in their Workshops and there was nothing inconsistent between the provisions of the two Acts in this regard. Both of them could well lie to-

gether and there was no question of the City Municipal Act which was a general Act from taking away from the Tramways Act which was a special one. Again there was no inconsistency between the terms of the license issued to the Electric Company and the provisions of the Municipal Act. The license simply specified that the generating station should be somewhere within the area of supply about 30 or 40 square miles in extent, but nothing about the kind of buildings to be erected, the kind of machinery or apparatus to be installed, the object being that they would all be subject to the same Municipal Control as obtained over other persons intending to exercise the said functions and it was not to be supposed that by virtue of the license issued to the Electric Company they were intentionally given a free hand to construct any building they liked for the generating station without any restrictions whatsoever to the exercise of those rights. Exemption from the control of a local authority and on the ground that the Company was a public utility company performing compulsory duties was also negatived by reference to several English cases and Indian analogies where double control was exercised in regard to a solitary matter. His Lordship Justice Reilly put the matter forcefully thus:

'We need not go so far as England to find cases where persons are required to take out licenses from two authorities in regard to the same matter. Under the Arms Act if a shopkeer in Madras, wishes to sell arms and ammunition he must get a license from the Commissioner of Police as representative from the Government; but he must also get a license from the Commissioner of the Corporation for storing ammunition. If a shopkeeper wishes to sell alcoholic spirits,

he must get a license from the Abkari Department but he must also get a license from the Commissioner of the Corporation for storing the spirits. If one of the oil companies which supply this country wishes to have an oil container for anything over 500 gallons of petroleum, it must get a license from the Government under the Petroleum Act. But if it wishes to have a container within the limits of the City of Madras, it must also get a license from the Commissioner of the Corporation. That instance perhaps illustrates best the necessity for such double control. It is possible that one of the oil Companies might acquire a strip of land along the Marina and propose to build there a number of huge oil containers. The authorities concerned under the Petroleum Act might issue a license for that having first assured themselves that the containers and the installation would be safely constructed and would cause no danger to the public. But the Commissioner of the Corporation, if he was asked for a license for storing oil in those containers would very properly refuse to grant it, refuse to allow a row of huge and hideous containers to be built on the edge of the Marina and so spoil one of the great attractions for which the city is famous all over the World. He would then be acting under the powers given to him by the City Municipal Act for the general comfort and convenience of the inhabitants of Madras. There is nothing inconsistent in the sanction of two authorities being required in cases such as that'. It was thus not a case of a general and special Act coming into conflict with each other but a case of sanction having to be obtained from two different authorities in regard to two different purposes as specified in the respective Acts.

4. **Illustrations from Madras.**—The principle called for direct application in a Madras case where the conflict was between Rule 56 of the Agency Rules of 1924, framed under the Madras Scheduled Districts Act (XIV of 1874) and S. 191 of the Madras Estates Land Act of 1908. The former was a Special Rule and the latter was a provision of a General Statute relating to the same matter, *viz.*, the period of limitation for appeals against decrees for rent and the point for decision was whether it was the period of 6 weeks provided in the Agency Rules or the period of one month specified under S. 191 of the Madras Estates Land Act that applied to the case. It was held following the rule above enunciated that the period for appeal for rent suits was 6 weeks and not one month. As his Lordship put it, the general rule is that the later statute repeals the earlier statute if both are equally general but the rule is subject to an exception that if the later Act is a general statute but the earlier Act is a special Act the earlier Act is not generally repealed by the later Act.

5. **Calcutta decisions.**—The Calcutta High Court has discussed the principle in a matter where the conflict arose between the Permanent Settlement Regulation of 1793 and the Income-Tax Act of 1922 wherein it was ultimately decided after an exhaustive reference to the provisions of the Regulation that there was really no promise or engagement of any description whatsoever by which the Government surrendered their right to the levy of a general tax on the income of all persons (irrespective of the fact whether they are Zamindars with whom the Permanent Settlement was concluded or no) on the basis that a general tax was no doubt a public demand but one which was levied on a wholly

different principle and in respect of a wholly different kind of liability levied not upon the Zamindars alone but several other members of the community as well, with no reference to the particular source from which it is derived.[7] Dealing with the general rule his Lordship Justice C. C. Ghose explained the rule in the following terms. The general rule no doubt was that where two Acts are inconsistent ordinarily, the latest expression of the Legislature ought to prevail where the language makes it clear beyond doubt that it was the manifest intention of the Legislature. In other cases, however, the special Acts have been held to impliedly repeal general Acts, in each case the primary thing that settles the construction being the language employed. There is a further rule that prior statutes are not to be deemed to be repealed by implication by a subsequent statute (if the two are repugnant) in cases where the prior enactment is special and the subsequent enactment is general. The main principle of construction in each case is that each enactment should be construed according to its own subject-matter and its own terms. The rule enunciated in *Seward* v. *Vera Cruz*,[8] has its limitations and should not be pressed too far as it applies only to cases where the subject-matter of the two legislations is one and the same and there is such an inconsistency between them as to render them incapable of standing together. In this particular case it was held that the Income-tax Act which was the later Act was passed without reference to the earlier Regulation (Permanent

(7) *King Emperor* v. *Raja Probhata Chandra*, 1927 Cal. 432 (F. B.). The majority view of the Full Bench especially that of Ghose, J., was approved by the Privy Council in *Probhat Chandra* v. *Emperor*, 57 I.A. 228=59 M.L.J. 814=1930 P.C. 209 (P.C.).

(8) (1884) 10 A.C. 59.

Settlement Regulation of 1793) which had been in force for a long time and was well known to the framers of the later Act and an attempt should be made to construe the Income-Tax Act as far as possible consistently with the earlier Act. The one related to revenue and the other to profits and there could be no contradiction between the two.

6. **Bombay.**—In a recent case in Bombay where there was a provision under the Land Revenue Act (II of 1876) enabling a party to file a suit against the decision of the Collector to the Revenue Judge within 30 days of the binding decision passed under S. 14 of the Act and for stay of the Collector's order on giving security to the satisfaction of the Collector, and S. 80 of the Civil Procedure Code of 1877 reproduced in later Codes enjoined the giving of a two months' notice as a condition precedent to the institution of a suit against the Collector, it was held the special provision in the earlier statute was not affected or abrogated by the general provision in S. 80, C.P.Code, and the latter was not applicable to suits under the earlier Act on the aforesaid general principle.[9]

7. **The Punjab.**—In the Punjab it was similarly held that a suit on an instalment bond which provided for the payment of the whole amount in default of payment of any one instalment was governed by Article 16 of the Punjab Loans Limitation Act, 1904, and not Article 75 of the Indian Limitation Act the reason being that a general statute should yield to a special statute as general statutes have only general cases in view and not particular cases which have been provided for in an earlier statute.[10] In another Full Bench case of the

(9) *Collector of Bombay* v. *Kamala Vahooji Maharaj*, 1934 B. 162.
(10) *Siha Sing* v. *Sundersingh*, 1921 L. 280.

same Province[11] in a conflict that arose between a general Act like the Indian Evidence Act and a Special Act like the Indian Contract Act directed to a special and specific object, *viz.*, the capacity of infants to enter into contracts it was held the disability of a minor to enter into a contract prevailed over the law of estoppel as laid down under the general Act and there could be no estoppel in the case of a void contract. The two Acts could well stand together and the Special Act could be construed as an exception to the general rule contained in the General Act.

8. **Rangoon.**—In *Chettyar V.E.A. Firm* v. *Commissioner of Income-tax,*[12] the Rangoon High Court had to consider which of the two Acts, the Indian Income-tax Act and the Specific Relief Act prevailed over the other. Under the Income-tax Act (XI of 1922) (before its amendment in 1933) when a Commissioner took up a case for review under S. 33 and passed an order there was no provision enabling an assessee to compel the Commissioner to refer the matter to the High Court under that section but it was contended that S. 45 of the Specific Relief Act enabled the High Court to direct such a reference. The Rangoon High Court refused to apply the provisions of the general statute it being stated that when the Legislature in a Special Act like the Indian Income-tax Act had laid down particular conditions for the exercise by that Court of certain powers, the Court was not justified in disregarding those conditions and holding by reference to a general Act like the Specific Relief Act that it had powers beyond those given by the Special Act. This result was arriv-

(11) *Khan Gul and another* v. *Lakhasingh and another*, 1928 Lah. 609.

(12) 1930 R. 37.

ed at notwithstanding that it was pressed upon their Lordships that the Privy Council case reported in *Alcocks Ashdown and Co.* v. *Chief Revenue Authority,*[13] (passed under S. 51 of an earlier Act) and In re *Abdul Khadir,*[14] under the same provision of the Income-tax Act held that recourse could be taken to provisions of the Specific Relief Act and the Commissioner directed to make a reference to the High Court. The Privy Council held that the word 'may' in the earlier part of S. 51 of the Income-tax Act of 1918 does not mean 'shall' but there could be circumstances as their Lordships held there were in that case (a serious principle of law) to be considered which necessitated the High Court's interference and its directing the Commissioner to state a case to itself. The Madras High Court in the case above quoted[14] put it even more forcibly by pointing out that unless the High Court had such a power the Commissioner would by calling records under S. 33 be enabled to 'burke' any further enquiry and to prevent the same. In such a case the principle enunciated in the Privy Council case above ought to be applied. The Legislature apparently recognizing the soundness of the latter view amended the Income-Tax Act in 1933 making the necessary changes enabling the assessee to seek a remedy in the High Court.

9. **Sind.**—In a Sind case[15] the conflict was between the provisions of the Special Act—Electricity Act (IX of 1910) (S. 14) under which a license was granted to the Karachi Electric Supply Corporation, and those of the Bombay District Municipalities Act (III of 1901)—the actual question that arose being who was to bear the

(13) 50 I.A. 227=47 B. 742=45 M.L.J. 592=1923 P.C. 138.
(14) 1926 M. 1051=49 M. 725 (S.B.).
(15) *Municipality of Karachi* v. *Karachi Electric Supply Corporation,* 1926 S. 115.

cost of removal of a certain aerial line with poles and struts, etc., constructed by the Karachi Electric Supply Corporation, the Electric Corporation or the Karachi Municipality. In holding that the Municipality which desired to construct an overbridge and for that purpose had to get the aerial line removed, had to bear the expenditure the Sind Judicial Commissioner's Court pointed out that when the rights of parties had been laid down in an Act specially appropriate to transactions which were exactly similar to those under enquiry it has to be clearly shown from the language of the statutes that the general Act intended for general purposes was passed with a view to overrule the special Act or to govern cases for which the latter was passed before it could supersede the special Act.

10. The principle of the surviving nature of the special Act in a competition with a general statute appears somewhat in a modified form in the rule that where a statute could have granted wider powers to a public body but it restricts the same by the restricted language employed for the purpose, the restricted powers alone can be resorted to and not the wider powers which it might be supposed to possess under the general or the common law of the land. It was accordingly held in an early case[16] that the Railway Company which might be supposed to have extensive rights on account of its ownership of the Railway compartments was not entitled to remove a passenger who had got into a compartment reserved for the use of another passenger or class of passengers as the powers granted to the Company were specified and restricted under S. 109 of the Indian Railway Act 1890 and there were remedies open under the general law to meet with such a contingency.

(16) *Mathradas* v. *Secritary of State*, 13 I.C. 237.

The rules that apply to cases of conflict between general and special statutes apply *mutatis mutandis* to conflicts between general and special provisions in regard to the same subject-matter in a statute. Not only should the two provisions be permitted to stand together where it is possible to do so and where there is no violent repugnance between the two but the general provision should in no way be permitted to override the special provision. As illustration of this principle it was stated in a Calcutta Case[17] that where two co-ordinate sections were apparently conflicting and inconsistent an attempt should be made to reconcile them but if that is impossible the later overrides the earlier subject to this limitation that a particular provision must be construed strictly as against a general provision. It was held accordingly that the word 'transfer' in clause (*a*) of S. 18 of the Bengal Tenancy Act includes a lease and that S. 85 of the Act was controlled by S. 18. Again it was held that the provisions of the Presidency Towns Insolvency Act (III of 1909) which provides for the determination by the Insolvency Court of all matters relating to debts due by third parties do not override the special provision contained in S. 189 of the Madras Estates Land Act (I of 1908). It was pointed out that a general Act has to be construed as not repealing a particular one directed towards a special object or special class of objects.[18] Where there is a specific provision as well as a general one in a statute and where a case falls within the language of the specific provision, the specific provision governs the case and not the general.[19]

(17) *Amarchand Roy* v. *Prasanna Dasi*, 1921 C. 603.
(18) In the matter of *Chidambaram Chetty*, 13 M.L.W. 374.
(19) *Bhana Makan* v. *Emperor*, 1936 Bom. 256.

BOOK V.

STATUTORY LANGUAGE.

CHAPTER I.

SECTION I.

Divergence between the letter and the spirit of the law.

1. We have in the foregoing chapters considered the Golden Rule of Interpretation and the limitations subject to which it has to be applied. The general rules or presumptions to be applied with due regard to the effects and consequences of such interpretation have also been considered. But these do not in themselves exhaust all classes of divergence between the letter of the law and its spirit, its obvious or literal meaning and the real idea or intention intended to be conveyed by such language. Human language and legislative expression are, at best, imperfect and words like Nature half convey and half conceal the thought within and when every effort has been made to reconcile or harmonize the written word and the intended idea there would still be cases left where the intention of the Legislature cannot be given effect to without a violation of the rules of grammar, going out of the way of normal interpretation and giving novel meaning to ordinary words, changing the places of words or setting them in proper places by a wholesale rejection of them and sometimes by the interpolation of words that do not find a place in the statute. As Justice Darling put it in *Rex.* v. *Ettridge*,[1] if from the entire reading of a statute it becomes

(1) (1909) 2 K.B. 24.

imperative to do so, and to give effect to the intention and meaning of the Legislature it is absolutely necessary, words in a statute may be rejected or transferred or even supplied but this can be only in extraordinary cases where the failure to do so would result in a monstrosity or something which is a manifest injustice. This no doubt is a violent transgression of the primary or the golden rule, the Bible of all statutory interpretation but is justified on the ground that all rules are only the means to an end which is the discovery of the true intention of the Legislature and the variations and corrections are only the corrections by the interpreter of what ought to have been done by the Legislator himself to express his true intention and which he, if he had been, less careless would himself have done.[2] The body of people for whose benefit or advantage a statute is passed ought not to be permitted to suffer by the inability, ignorance, carelessness or the unskilful handling of the material the Legislature set before itself by the draftsmen employed to execute its designs and it should always be open to the interpreter to effectuate such a design except where it is an outrage on all canons of interpretation or the language is so hopelessly unbending as not to admit of any such modification or variation. As was pointed out by Lord Hobhouse in *Salmon* v. *Duncombe*,[3] grave consequences would follow if the main object of a statute is reduced to a nullity by the draftsman's unskilfulness or ignorance of the law but the interpreter's interference with the words of a statute can only be justified if at all in cases of grave necessity or an 'absolute intractability' of the language used. The presumption however always is

(2) *Maxwell*, Interpretation of Statutes (7th Ed.), p. 198.

(3) (1886) 11 App. Cas. 627 at 634=55 L.J.P.C. 69 at 73.

that the Legislature is an ideal person that does not commit mistakes and it would lie heavily on a person who wants to make out the contrary to establish his contention by pointing out the circumstances which would render a correct and exact interpretation of words wholly opposed to the manifest intention of the Legislature.[4] In other words, the only case in which we can tamper if at all with the language employed is in those cases where such language so far from effectuating its obvious intention tends to defeat it.[5] The supplying of a *causus omissus* or of obvious omissions can only be resorted to as an extreme step rendered necessary by the attempt at ascertaining the intention of the Legislature failing except by taking recourse to such a step.[6] The Court is bound to read the words of an Act *prima facie* according to their ordinary meaning and it is only in cases where there are compelling circumstances to make one infer that the words were used in a larger and broader meaning than their plain meaning implies, that a Court will be bound to read such meaning into them.[7] On similar grounds it has been held that meaningless or insensible words may be omitted if their retention would render the statute result in an absurdity or in its being reduced to a nullity. As Lord Coleridge, C.J., put it in *Reg.* v. *Clarence*,[8] if the apparent logical construction of the language leads to results which it is impossible to

(4) *Mayor, Councillors and Burgesses* v. *Taranaki Electric-Power Board*, 1933 P.C. 216=66 M.L.J. 67.

(5) *London and India Docks Co.* v. *Thames Steam Tug and Lighterage, Co., Ltd.*, (1909) A.C. 15 at 23=78 L.J.K.B. 90 at 94.

(6) *Mersey Docks and Harbour Board* v. *Henderson Brothers*, (1888) 13 App. Cas. 595 at 607.

(7) *Barlow* v. *Ross*, (1890) 24 Q.B.D. 381 at 389=59 L.J.Q.B.D. 183 at 186.

(8) (1888) 22 Q.B.D. 23 at 65=58 L.J.M.C. 10 at 32.

believe that the Legislature contemplated or one from which one's judgment recoils a fair inference may be drawn that such a construction could not be the construction which the Legislature intended should be placed upon it and a strong attempt should be made by all means possible to find another interpretation consistent of course with ordinary canons of judicial interpretation.[9]

2. **Language not a perfect medium of expression.**—In a living language no one word exactly expresses the meaning of another and even in statutory language it is not always possible to find words to express a legal idea. As has been stated it is difficult to frame an exact definition of a word except in Mathematics.[10] The Legislature is often compelled therefore to indicate what a particular word employed in a statute means and where it has to add to its meaning for the purpose of its being understood, and define what it in its comprehensive sense means or is intended to mean. These are cases where instead of leaving it to the difference of opinion that it might lead to amongst interpreters, the Legislature fixes its meaning with due regard to all possible cases in the view of the Legislature or at all counts with regard to all cases where it assumes or is informed the interpretation of the word may be called into exercise.

3. **Definitions.**—As pointed out by the Madras High Court[11] when it is mentioned that a definition includes certain things it should be taken that the Legislature intended to settle a difference of opinion on a point or wanted to introduce other matters that would not come

(9) *Colquhoun* v. *Brooks*, (1889) 14 App. Cas. 493=59 L.J.Q.B. 53.

(10) *Wakfield, L. B.* v. *Lee*, (1876) 1 Ex. D. 336 at 343.

(11) *Madras Central Urban Bank, Ltd.* v. *Corporation of Madras*. 1932 M. 474.

within the ordinary connotation of the word or expression sought to be defined. It has an enlarging scope instead of confining a word to the limits of its normal meaning.[12] In such cases as the Privy Council has pointed out[13] the word or phrase should be construed as signifying not merely that which it signifies according to its natural import but something more which the interpretation clause declares it shall include. The interpretation clause is in other words, an exhaustive explanation of the meaning which for the purposes of the Act must be invariably attached to the words and expressions so explained. It is not as if the explanation defines what the meaning of the word should be under all circumstances but it should be taken as merely declaring what matters may be comprehended within a term when circumstances require that it should be so comprehended.[14] The same is the case where the statute enjoins that a word or expression shall be deemed to be something else. The only idea of inserting such definitions is that the something which is deemed is not in reality what it is required to comprehend but the statute requires the interpreter to interpret it as the Legislature directs him to do. When a thing is deemed to be something else it is not in reality that something else but is treated as that something else by a statutory fiction for the purpose of that particular statute. Of course in applying the statutory fiction the interpreter has to enquire for what purpose the fiction is resorted to.[15] It was held in the *Madras Central Urban Bank, Ltd.* v. *Corporation of Madras*,[16] that 'Company' in the absence of definition

(12) In re *Nasibun*, 8 Cal. 534.
(13) *Dilworth* v. *Commissioner of Stamps*, (1899) App. Cas. 99.
(14) *Bapu Vithal Rajput* v. *Secretary of State*, 1932 B. 370.
(15) *Chandrika Ray* v. *Ramkuar Thakur*, 1923 P. 88.
(16) 1932 M. 474.

has to be deemed to have been used as meaning a body of persons associated for some common object or other purpose and 'Banks' satisfied that definition. In the Bombay case cited above[17] where their Lordships had to construe the relation of trees to land on which they stood, it was pointed out that a tree was not land but only a part of it. The ownership of land normally extends *ab ino usque ad caelum* and the same applied to occupancy under the Bombay Land Revenue Code subject to certain reservations in favour of the Government and whatever the unit of land dealt with in S. 73-A of that Code (1879) may be and assuming that it deals with each and every piece of land held by the occupant, a tree was only a part of the land and not 'land' and the section therefore did not preclude the transfer of a part of the land. It was pointed out in a Sind case[18] that the expression in S. 3, Cls. (21) and (40) 'shall include' in the General Clauses Act (1897) is used in the restricted sense as equivalent to 'mean and include' and accordingly 'Government' in S. 3, Cl. (21) means the Government of India and in Cl. (40) the Local Government but they did not include the British Government.

SECTION II.

Stray Illustrations.

A few stray cases of variation of meaning of words used in statutes from their ordinary meaning may be mentioned to illustrate the principles enunciated in the earlier part of this Chapter. A 'single transaction' under the Indian Stamp Act (Act II of 1889), Schedule I, Article 48 applies to more than,

(17) *Bapu Vithal Rajput* v. *Secretary of State*, 1932 B. 370.
(18) *Jeramdas Vishendas* v. *Emperor*, 1934 S. 96.

one act provided they are related to each other so as to form a single transaction such for example as those which are necessary to perfect a sale or mortgage of property.[19] The use of the word 'final' with reference to a decision does not prevent the superior Courts from bringing proceedings before themselves by *certiorari* which can be taken away only by express words.[20] Income from fisheries which is agricultural income for purposes of the Madras Estates Land Act is not likewise agricultural income for purposes of the Indian Income-Tax Act.[21] 'Unmarried daughter' under the Workmen's Compensation Act, S. 2 (1) (*d*) includes a married woman who has become a widow.[22] 'Other personal injuries' in S. 89 of Probate and Administration Act of 1889 refer not merely to bodily injuries but injuries similar to defamation such as those caused by malicious prosecution as they can be brought logically and grammatically within the definition of 'injuries not causing death'.[23] An adopted brother's daughter may depend for her maintenance on a workman but does not come within the definition of 'dependant' under the Workmen's Compensation Act.[24] A claim for settlement of accounts and profit is a 'claim for money' under S. 227 of the Agra Tenancy Act notwithstanding that the expression is used in a more restricted sense in

(19) *Venkataramana Iyer by Agent T. Rama Rao* v. *N. G. Narasinga Rao*, 38 M. 134.

(20) *Madduru Munuswami Chetty* v. *Board of Revenue and another*, 55 M. 137=1932 M. 33. See also *Rex.* v. *Nat Ball Liquor, Ltd.*, (1922) 2 A.C. 128=91 L.J. P.C. 146=127 L.T. 437=38 T.L.R. 541.

(21) *Commissioner of Income Tax* v. *Sevuga*, 1932 M. 757=63 M. L.J. 634.

(22) *Solomon Bibi* v. *E. I. Railway*, 1933 C. 358 (2).

(23) *Gadigi Mareppa (Veerabhadrappa)* v. *Firm of Marwadi Vannaji Vajangi and others*, 1918 Mad. 1100.

(24) In re *Zamadar Munshi Ram*, 1931 L. 399.

other enactments.[25] An 'appeal' may normally include a 'suit' but in a Code where both words are used the same rule does not apply.[1] The term 'representative' used in S. 1 of Act XIII of 1855 does not apply to Europeans and Eurasians nor all the heirs of the deceased.[2] A railway receipt is an 'instrument of title' within the meaning of S. 103 of the Contract Act, (Act IX of 1872) as it evidences proof of possession or control of goods.[3] There may be only ruins of a house upon a land but still it is not correct to say it is unoccupied.[4] A marksman can sign and be a valid attestor.[5] A High Court may be a District Court for purposes of the General Clauses Act.[6] Amongst recent pronouncements on variation of meaning may be cited in *Kotla Venkataraju* v. *Maharaja of Pithapuram*,[7] where Varadachari, J., held that the term enhancement as used in the Madras Estates Land Act should not be understood either in its etymological sense or even in the sense explained in *Battina Appanna* v. *Raja Tarlagadda*,[8] but should be construed with reference to the decisions bearing on the term prior to the Estates Land Act. The right to regulate traffic under Byelaw No. 2 of S. 298—H(*b*) of the U.P. Municipalities Act includes not merely the right to regulate the passing to and fro

(25) *Collector of Meerut* v. *Chowdary Risalsing*, 1934 All. 681.

(1) *Satya Nidan Banerjee* v. *Mahammad Hazubber Ali Khan*, 1931 A. 533.

(2) *Harold Clive Johnson and others* v. *The Madras Railway Co.* and *Port Novo Cundaswamy and others* v. *The Madras Railway Co.*, 15 M.L.J. 363.

(3) *Ramadas Vithaldas Darbar* v. *Amarchand*, 40 B. 630 (P.C.)

(4) *Barati* v. *Secretary of State*, 1921 Oudh. 65.

(5) *Alapati Nagamma* v. *Alapati Venkatramayya and others*, 58 M. 220=1935 M. 178.

(6) In the matter of *G. A. Kuppuswami Nayar*, 1930 M. 779.

(7) (1938) 1 M.L.J. 256 at 266 (F.B.).

(8) 33 M.L.J. 355.

in the streets but also the fixing of stands or a provision for motor cars or lorries plying for hire being allowed to halt only at the stands fixed notwithstanding that the latter may really amount not to regulation of traffic in streets but to the regulation of vehicles not in traffic in streets.[8a] As Justice Allsop put it in the above case, the expression includes the right to stop vehicles at certain places as also to prevent them from stopping and 'street' includes the 'verges of the carriage way'. The word 'Sister' includes a 'half-Sister' according to the Benares School of Hindu Law.[9]

Section III.

Interchange of conjunctions.

1. The interchange of conjunctions 'or' and 'and' is another illustration of the modification of statutory language to meet the intention of the Legislature.

2. Where S. 228 of the Calcutta Municipal Act (extended by statute to the Municipality of Howrah) provided that a consolidated rate due in respect of any building or land shall be a first charge on the building or land, Justice Cuming held that it is sometimes necessary to read the conjunctions 'or' and 'and' one for the other and that it would be straining the words of the section to say that it did not refer to the tax assessed on the land and house together.[10] Again the Madras High Court in construing S. 19 of the Malabar Compensation for Tenants' Improvement Act (Madras Act

(8-a) *Mewa Ram* v. *Municipal Board, Muttra,* 1939 All. 466.
(9) *Amrit and others* v. *Mt. Thaga,* 1938 Nag. 134 (F.B.).
(10) *Emperor* v. *Asi Mulla Mondol and others,* 1925 C. 1068.

I of 1900),[11] which deals in terms with future contracts held that it could not be held as dealing only with contracts which take away or limit the right of a tenant to make improvements and also limit his right to claim compensation from them under the Act but that it equally applied to contracts which took away or limited either of these rights.[12] The decision was based on the intention of the legislature to prohibit all future contracts taking away or limiting either of the rights in question and on the long recognised principle relating to the exchange of the words 'and' and 'or' under the well-accepted rules, for the interpretation of statutory language.

SECTION IV.

Rejection of superfluous words and incorporation of necessary words.

1. The necessity for rejection of superfluous words is illustrated in *Phalumal* v. *Naramdas*,[13] where it was laid down that where no meaning can be given to words occurring in a statute and where the statute itself would become a nullity by the retention of such words the Court has power to omit them and interpret the statute as though the words did not exist.[14] It was therein pointed out that in clause (1) of S. 50 of the Registration Act,[15] the words, 'not being a decree or order'

(11) 'S. 19. Nothing in any contract made after the first day of January 1886, shall take away or limit the right of a tenant to make improvements and to claim compensation for them in accordance with the provision of this Act.'

(12) *Kumhalur Puthia Vettil Rayappa Etioti* v. *Vattu Koilotte Parkum Punisseri Keleppa Kurup and others*, 40 M. 594=32 M.L.J. 110 (F.B.).

(13) 1933 Sind 151 (2) (F.B.).

(14) In re *Etridge*, (1909) 2 K.B. 24.

(15) 50. (1) Every document of the kinds mentioned in clauses (*a*), (*b*), (*c*) and (*d*) of section 17, sub-section (1) and clauses (*a*) and (*b*)

were superfluous and to treat them as such was the only best way of reconciling clauses (1) and (2) of S. 50 of that Act. It was explained in the same case that where S. 50 tells us what does not apply to documents referred to in S. 17 (2) of the Act, and there is nothing specified as to what actually applies, the ordinary principle that where nothing else appears the well-established rules should be deemed to apply is applicable and it should be treated as a case where the legislature refrained from mentioning it as it would be the reiteration of what is already well known. In *Jagadish Chandra Deo Dhabhal* v. *Satrughna Deo Dhabhal*,[16] the addition of words not actually found in the statute was found necessary to bring out the intention of the legislature. The case was one dealing with Chota Nagpur Encumbered Estates Act and the point that arose for construction was the meaning of the phrase 'such debts and liabilities' in S. 3 of Act VI of 1876 which says that by the publication of an order under S. 2 of that Act all proceedings that may be pending in any Civil Court in British India shall be barred. It was held that the expression 'such debts and liabilities' should be confined only to debts and liabilities other than those incurred by or to Government and extended only to all other debts and liabilities. In the Patna High Court the same principle came for consideration in *Harnandandan Roy* v. *Bali-*

of section (18), shall, if duly registered, take effect as regards the property comprised therein against every unregistered document relating to the same property and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

(2) Nothing in Sub-section (1) applies to leases exempted under the proviso to Sub-section (1) of Section (17) or to any document mentioned in sub-section (2) of the same section or to any registered document which had not priority under the law in force at the commencement of this Act.

(16) 33 C. 1065.

ram,[17] where Fazl Ali, J., one of the differing Judges in the case, with whom Wort, J., the third Judge who gave his opinion agreed held that 'relief' meant 'relief which the Court was bound to grant' and not one which it was discretionary with it to grant or refuse and that accordingly a suit for future mesne profits not granted in a prior suit was not barred.

2. It should be remembered, however, that the above are only exceptional cases and should not be treated as ordinary rules of construction or such as can be freely used in the interpretation of statutory language without a sufficient examination of whether there is really any necessity for such variation or modification of the language. In a case which went up from the Madras High Court to the Privy Council their Lordships of the Privy Council refused to approve the addition of the words 'for the time being' to the words 'the original cost thereof to the assessee' or 'at the time of the original cost' in S. 10 (2) (*vi*), of the Income-tax Act as suggested by the High Court, as according to their Lordships both involved insertion in the sub-section of words which were not found there and which were not in the least necessary for the intelligent construction thereof, and constituted 'a method of construction to which their Lordships could give no countenance'. There was no ambiguity in the provisions of the section and the ordinary and natural meaning of the words used must prevail.[18]

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(17) 1931 P. 1.

(18) *Commissioner of Income-Tax, Madras* v. *The Buckingham and Carnatic Co., Ltd., Madras*, 69 M.L.J. 879.

Section V.

Mistakes in Statutes.

1. There is no presumption that a legislature has committed a mistake, the presumption if at all, being the other way. The main object of all interpretation being to give a sensible meaning to the words in a statute *ut res magis valeat quam pereat* the attempt of the interpreter should always be to give effect to the object and intention of the legislature where they are clear and to get over the effects of the unskilfulness or the inability of the draftsman except where the language is intractable.[19] Halsbury gives the following instances of the correction of the statutory language (1) the rectification of obvious misprints; (2) rejecting superfluous words and phrases; (3) the supply of words or expressions omitted by inadvertence; (4) the substitution of one word for another; (5) reading negative words as affirmative and *vice versa;* (6) putting a possible but not the usual meaning upon words; (7) expansion of their literal meaning.[20]

2. Clerical or other obvious mistakes can always be corrected by the interpreting Court as also slips arising on account of careless drafting. As Maxwell puts it,[21] 'Judicial interpretation should deal with careless and inaccurate words and phrases in the same spirit as a critic deals with a corrupt obscure text when satisfied on solid grounds'.[22] A clear instances of such obvious mistake occurs in S. 11 of the Madras Proprietary Village Service Act, (II of 1894) which gives the

(19) Halsbury Laws of England, Vol. 27, page 146.
(20) *Ibid.*, pages 146 and 147.
(21) Maxwell's Interpretation of Statutes, Ch. IX, page 221.
(22) Comp. *Green* v. *Wood,* 14 L.J. Q.B. 217.

Divisional Officer power to set aside the nomination of the proprietor if the former considers the nominee to be 'qualified' under sub-S. (1) of S. 10 which speaks of the several disqualifications rendering an applicant ineligible to any village office. 'Qualified' in the above statute really means 'Disqualified' and as has been pointed out by Madhavan Nair, J., in *Sarraju Venkataraghaviah* v. *Sarraju Chenchu Subbiah*,[23] is really a mistake for it. Another instance of an obvious mistake committed in drafting an amendment which had created considerable confusion in the minds of the public and of the several High Courts is afforded by the Indian Limitation and Code of Civil Procedure (Amendment) Act (XXVI of 1920) and the manner in which it was published in the Gazette of India the text in which according to S. 78 of the Indian Evidence Act must be taken to be the authorised text of an Act. The second section of the aforesaid amending Act provides that in the third, division of the first schedule to the Indian Limitation Act, 1908, in articles 176, 178 and 179 for the word 'Ditto' in the second column the words 'ninety days', 'six months', and 'ninety days' respectively shall be substituted. The intention appears to have been (as subsequent events had shown) that the period of limitation for bringing the legal representatives on record not merely of a deceased plaintiff or deceased appellant under S. 176 but also of a deceased defendant or of a deceased respondent should be reduced from 6 months, the time allowed under the law as it then stood to 'ninety days'. It would appear that the draftsman of the amending Act instead of keeping before himself the text of the Limitation Act as published in the Gazette (wherein articles 175 and 176

(23) 1931 M. 502=33 M.L.W. 294.

were published on page 190 and the subsequent articles on page 191) had before him a copy of the Act (such as the 1908, 1909 or 1919 editions of the Act published under the authority of the legislative departments of the Government of India) in which articles 175 to 178 were all printed on the same page and he considered that when the limitation under article 176 was altered to 90 days the word 'ditto' opposite article 177 which existed in his copy of the Act would be regarded as equivalent to 90 days and the retention of that word would automatically reduce the period of limitation under article 177. But the Lahore High Court in *Govinda Das and others* v. *Rup Kishore and others*,[24] acting on the rule of construction that it is not open to the Court to speculate as to the intention of the legislature where it is not carried into effect by the language used held that the period of limitation under article 177 had not been altered by the amending Act XXVI of 1920 and was only 6 months. The other High Courts dissented from that view (it is submitted correctly),[25] but there was considerable confusion caused in the public mind by a variety of interpretation on a matter in regard to which the intention of the legislature was plain but had not been clearly expressed owing to the draftsmen's false sense of economy in the employment of words in a statute vitally affecting procedure and practice and a correct interpretation, of which was essential. The Act was amended later so as to bring out more clearly the obvious intention of the Legislature by Act XI of 1923. It is submitted that even without the interference of the legislature it would

(24) 1924 Lah. 65.

(25) *Vide* the author's article at page 67 of the Journal Portion of 21 Madras Law Weekly.

have been open to Courts to interpret the real intention of the legislature instead of construing the same in an obviously incorrect way.

SECTION VI.

Cases of 'May' and 'Must'.

1. But by far one of the most familiar illustrations of the variance between the ordinary grammatical meaning and the statutory meaning is afforded by the language in measures which to all outward purposes are merely permissive, enabling or directory but are in effect mandatory, imperative or compulsory and measures which apparently confer powers and privileges but in reality enjoin duties and obligations also. The language employed in all these cases construed according to its ordinary grammatical meaning leaves the power or privilege in the discretion of the body in whom it is vested but the bodies are required according to sound judicial construction to exercise them compulsorily and in the best interests of those for whose benefit they are conferred. The words ordinarily employed in such cases are 'may', 'shall if they think fit', 'shall have power', 'it shall be lawful', 'shall have full authority' which are all enabling in their normal import but have really a compelling force and are therefore clear cases of modification by judicial construction. 'May' in such cases is understood as 'must' and 'may be done' as 'must be done'. It is not as though 'may' necessarily means 'must' but that the statute confers a power and it becomes a matter of enquiry whether in the circumstances of the case it is the duty of the person or the body on whom the power is conferred to exercise that power. If no such duty appears to be cast, it is purely discretionary; else it is a power coupled with a duty and it is imperative on the

part of the person on whom it is conferred to exercise it.[1] The enabling words in each case are not by themselves significant of an obligation but contain within themselves potentialities of converting what appears to be a mere power into a compulsory obligation or duty. The circumstances which compel the reading of 'may' into 'must' are many and varied but generally speaking the context, the general scope and object of the Act and the relative position of the word with reference to the other parts of the statute may all have a bearing on deciding the same. The matter is somewhat tersely put in the leading case of *Julius* v. *Bishop of Oxford*,[2] which has been followed in several cases in British India. Referring to the words 'it shall be lawful', the Lord Chancellor (Earl Cairns) remarks, "they are not equivocal. They are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power and they do not of themselves do more than confer a faculty or power. There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so. Whether the power is one coupled with a duty is for the Court to decide." 'Where the words are merely enabling in their grammatical sense, it lies upon the party who contends them to be obligatory to prove

(1) *R.* v. *Mitchell*, (1913) 82 L.J.K.B. 153.

(2) 5 App.Cas. 214 at 222.

the circumstances which necessitate the body invested with the power exercising those powers.' As Lord Coleridge points out in *Reg* v. *Tithe Commissioners,* 14 Q.B. 459, where words which are merely directory, permissive or enabling are used they may have a compulsory force where the thing to be done is for public benefit or advantage or the advancement of public justice.

2. **Illustrations under Indian Statutes.**—Under the Indian statutes wide powers are given to Railway and other companies and also to the local bodies entrusted with the administration of specified local areas to undertake and complete works of public utility or administer generally the areas entrusted to their care and it becomes a matter of importance how the powers are to be exercised and the duties discharged with special reference to the language employed which vests or deposits the power with the particular company or body. The powers should in all cases be exercised *bona fide* reasonably and for the purpose for which they are conferred and not for collateral purposes not warranted by the statute. They should be exercised by the person or body named itself and not its delegate except where the language points to the contrary. It is also *prima facie* not assignable or capable of being delegated except where the statute itself authorises it. The discretion cannot be fettered by any general rules framed by the person or body itself contrary to the tenor and object of the statute and should always be exercised for the public advantage and good. The discretion is to be exercised according to rules of reason and justice and not arbitrarily or according to private opinion of the individual exercising that discretion,[3]

(3) *Bookes Case,* 5 Rep. 100 (*a*).

according to law and not humour. The exercise of the discretion ought not to be vague or fanciful but should be according to principles of sound law and jurisprudence and must be circumscribed by the limits set to it by the statute and by those which an honest man competent to discharge his official duties would set to himself. Within the limits of the exercise of the power as above enunciated no Court can or ought to interfere with the exercise of the discretion by the person exercising it.[4] Where it transcends those powers a Court can always interfere and check the unlawful exercise of such discretion and direct its being exercised within the statutory limits. As Justice Harington has pointed out in *Lala Suraj* v. *Golabchand*,[5] no general rule can be laid down to determine the consequences of non-compliance with the terms of any statute without consideration of the language employed and the mischief at which it is aimed and affirmative words however mandatory in form might only be directory while negative words prohibiting the doing of a thing might be really imperative.[6]

3. **Vizianagaram Case.**—In a recent Madras case[7] the above principles came in for application when the High Court had to consider the rights of Court of Wards under the local statute creating that body. It was claimed before their Lordships that in matters of custody residence, education and marriage of the minor children of a Ward the rights usually vesting in the legal guardian became vested in the Court of Wards and that so

(4) *Sharp* v. *Wakefield Sha*, 1891 A.C. 173=60 L.J.M.C. 73=64 L.T. 180=39 W.R. 551=55 J.P. 197.

(5) 27 Cal. 724.

(6) *Rameshar* v. *Sheodin*, 12 All. 510 at 517 (F.B.).

(7) *Raja of Vizianagaram* v. *Secretary of State*, 1937 M. 51=71 M.L.J. 873=44 M.L.W. 904=1936 M.W.N. 1285.

far as those matters were concerned the exercise of those rights could not be controlled by a judicial tribunal. His Lordship Sir (then Mr.) Venkata Subbarao, Officiating, C.J., commenting on the confusion arising on account of the misunderstanding of the scope of a right and of a power granted under statutes commented as follows: "The purpose of those changes is merely to make that legal and possible which otherwise the Court of Wards would have no right or authority to do; it is empowered to incur charges or make disbursements which it would have no right to incur or make in the absence of that provision. But the power so conferred is for the benefit of the persons indicated in that section. When a statute confers authority on some public body or person in terms simply permissive or enabling (by the use of expressions such as 'may' or 'shall have power') the question has often arisen whether the power so conferred is merely a discretionary power or has a compulsory force. The learned Advocate-General contends that every one of the enabling words in every clause of S. 23 is to be construed as creating a duty. This may be granted...but what follows? Is the power to be regarded as having been conferred upon the Court of Wards for its own benefit in which case the power may amount to a right or for the benefit of others, *viz.*, the persons specifically pointed out in the clauses in question? There can be no doubt having regard to the scope and object of the Act that the second of the two alternatives is what is intended. Numerous statutes have made us familiar with instances where public bodies have been entrusted with powers for the benefit of persons specifically indicated and it is incontestable that no question of exercising the power can arise unless when the case arises, its exercise is duly

applied for by the party for whose benefit it is intended." After referring to the Bishop of Oxford's case already alluded to, his Lordship quotes from Lord Blackburn's judgment in the same case which states the law in the following terms: "The enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right. It is far more easy to show that there is a right where private interests are concerned than where the alleged right is in the public only and in fact in every case cited and in every case that I know of (whether the words conferring a power are enabling only and yet it has been held the power must be exercised) it has been on the application of those whose private rights required the exercise of that power".[8] In the determination of the intention of the Legislature whether it is the conferring of a mere discretion or the imposition of a positive duty regard should be had *inter alia* to the general object of the statute. The same object is most relevant in determining whether the power was conferred on the statutory body or a special class of persons. As Maxwell points out it is in the last degree improbable that the Legislature would 'overthrow fundamental principles, infringe rights or depart from the general system of law without expressing its intention with irresistable clearness."[9] In a Full Bench case of the Patna High Court,[10] the words, 'it shall be lawful for the Local Government to make rules consistent with the Act' for determining the authority who shall decide disputes relating to the election to the Boards under Bihar and Orissa

(8) *Julius* v. *Bishop of Oxford*, (1880) 5 App. Cas. 214 at 222.

(9) Maxwell, Interpretation of Statutes, 7th Edition, page 71.

(10) *Lakshmichand Suchanti* v. *Ram Pratap Chaudhuri*, 1934 Pat. 670 (2) (F.B.).

Local Self-Government Act of 1885, were held to be mandatory and not merely enabling or permissive. His Lordship Courtney-Terrell, C.J., points out, "in construing Acts of public utility where the framing of the rules and the making of the appointment is necessary in order that the object of the Act may be attained, such words which might otherwise be considered permissive are really mandatory. The permissive form is a mere courteous convention. The Act really imposes a duty on the executive and it is implied that a public body will carry out the duties indicated by the Legislature in order that the purpose of the Legislature might not be frustrated". "The rule of construction is well recognized. The case is quite otherwise when a public body or officer is invested with authority to exercise a judicial discretion. Even in such a case the body or receiver must receive any application made to it and exercise the jurisdiction conferred either by granting or withholding the relief claimed". The Full Bench accordingly held that till the tribunal required to be set up under the Act by the Government was established a party had a right of recourse to a Civil Court with corresponding rights of appeal. In *The Government of Burma* v. *Municipal Corporation of the City of Rangoon*,[11] Heald, Ag. C. J., was of the opinion that the framing of rules required to be framed under the enabling provisions of the Rangoon City Municipal Act (1922) was obligatory relying upon the *Bishop of Oxford's case* but the majority of the Full Bench expressed a contrary opinion and held that 'may' does not mean 'must' as the Rangoon Corporation had already framed rules in regard to the matter in ques-

(11) 8 Rang. 333=1930 R. 297 (F.B.).

tion, Otter, J., holding that he could see nothing in the objects of the statute under which the act to be done, viz., 'the payment of salaries' presupposed a duty on the Corporation to frame such rules in regard to payment of passage to the officers in its service and it was not for private or public good either and that the Corporation had unfettered discretion to make payments such as leave passages to the servants unlike the case of pensions and gratuities. The difference of opinion however related not to the validity of the tests laid down in the *Bishop of Oxford's case* but to their application to the facts of the particular case.

CHAPTER II.

Directory and Mandatory Statutes.

1. **Tests for Determination.**—It is thus clear that the directory or mandatory form of the language employed is not always a sure index of the intention of the Legislature as to whether the provision is meant to be merely directory or imperative and mandatory in its operation. The intention becomes more difficult of ascertainment where without expressing or declaring the consequences of non-observance of such a provision a statute enacts that something shall be done or done in a particular manner. The crucial test in all these cases is how best the object of the Legislature will be fulfilled whether by construing the language as prohibiting the thing directed to be done in the manner indicated and in no other or by reading it as merely an instruction or advice as to the way in which it should be done not necessarily involving the invalidity of the thing required to be done if not so done. There is no hard and fast line that can be drawn between the two classes of statutes, one in which the command of the Legislature is such that its non-compliance nullifies the thing done and the other merely a statutory advice entailing no serious consequences except the levy of a penalty where it is provided for in the statute. Nor can any general or universal rule be laid down applicable to every case except that the object of the statute has to be looked at in each case and the convenience and justice that may flow from the interpretation one

way or the other. As the Privy Council observed in a leading case on the subject 'where the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the object of the Legislature, it has been the practice to hold such provisions to be directory only'. The neglect or the failure to obey the expressed will of the Legislature in such cases though punishable in an appropriate way would not and ought not in such cases affect the validity of the acts done.[1] Where a power, privilege or exemption from liability is conferred by a statute and the observance of certain formalities or conditions is attached to the same it is generally held that the fulfilment of those conditions or qualification is mandatory as it is only just and convenient that he who exercises a right or authority ought to be compelled to strictly observe the conditions subject to which that right or privilege is conferred. The whole aim and object of the law would be defeated if the command to do a thing in such cases did not imply a prohibition to do it in any other way.[2] Thus a useful test by which the directory provisions can be distinguished from the mandatory or imperative provisions of a statute is to ask one's self whether the statutory prescriptions affect the performance of a duty or relate to the exercise of a privilege or power. As Justice Mookerjee has pointed out[3] where rights or

(1) *Montreal St. Railway Company* v. *Normandin*, 1917 P.C. 142.

(2) *Jolly* v. *Hancock*, (1852) 7 Ex. 820; In re *Dickinson*, (1882) 20 Ch. D. 315.

(3) *Mathura Mohan Saha* v. *Ram Kumar Saha and Chittagong District Board*, 1916 C. 136=43 C. 790.

privileges are granted with a direction that certain regulations or formalities should be complied with, it is not unjust or inconvenient to exact a rigorous observance of them as essential to the acquisition of the right or authority conferred.[4] In contradistinction to such cases are those where a statute while imposing a public duty requires its performance in a particular manner within a particular period or subject to certain conditions. In the latter class of cases the prescriptions laid down can well be regarded as only directory. The distinction is well illustrated in a number of English cases referred to with approval in the Calcutta case above referred to and may be said to have fairly been recognized as good law in this country. It is also a recognized rule that where a public body or company is established by a statute or incorporated for specified powers, the prescriptions laid down in the statute of which the public body or the company is the entire creature the conditions laid down for its working or the limitations subject to which it is to function ought to be observed imperatively and are essential for the validity of its acts or doings.[5] Where the Legislature employs a language which makes the terms of an Act not imperative but permissive the fair inference is that it was intended that the general powers conferred should be exercised in strict conformity with private rights and not so as to infringe them.[6]

2. **Illustrations.**—It was held in Madras following the above principles that the provisions of S. 37 of the

(4) *Caldow* v. *Pixell*, (1877) 2 C.P.D. 562=46 L.J.C.P. 541=36 L.T. 469=25 W.R. 773.

(5) *Freud* v. *Dennett*, (1858) 4 C.B. (N.S.) 576.

(6) *Per* Lord Watson in *Manager of the Metropolitan Asylum Dt.* v. *Frederick Hill*, (1881) 6 A.C. 193, quoted in *A. B. Moola and Sons* v. *Commissioner for the Rangoon Port*, 1931 R. 95.

Presidency Banks Act (XI of 1876) prohibiting directors of such banks from entering into certain transactions including mortgages of immovable property were only directory and not mandatory. The prohibition was directed against the directors and not the Banks and it was more in the nature of instructions for guidance and governance of the directors and while their non-observance might render the directors liable to the Bank for any loss occasioned to their company on account of their exceeding the powers granted to them cannot enable third parties who have entered into contracts with the Bank to repudiate their contracts or attempt to escape liability arising under them.[7] The Bank itself was not prohibited from entering into the transaction and it was perfectly open to it to accept or refuse the contract entered into by the directors. The action of the directors under the circumstances was not a *malum prohibitum*.[8] It would have been different if the prohibition was in the interests of the shareholders and based on considerations of public policy.[9] Where the provisions are only directory and not mandatory disregard of its provisions will not make the transaction void.[10] Similarly R. 161 (1) of the Civil Rules of Practice requiring the Court to which a decree is transferred for execution to send the decree back to the original Court if within six months after the transfer the decree-holder does not take steps to

(7) *Nagar Damodar Shambogue* v. *Gudhimar Rama Rao*, 39 M. 101; *Jharia Water Board* v. *Jagadamba Loan Co., Ltd.*, 1938 P.W.N. 635= 19 Pat.L.T. 833=1938 Pat. 539.

(8) *Turner* v. *Bank of Bombay*, (1901) I.L.R. 25 Bom. 52.

(9) *Tayler* v. *Chichester and Midhurst Railway Company*, (1867) L.R. 2 Ex. 356.

(10) *Queen* v. *Left House*, (1886) L.R. 1 Q.B. 433; *Queen* v. *Ingall*, (1876) L.R. 2 Q. B. D. 199.

execute the decree is only directory and not mandatory and proceedings taken after that period are not void *ab initio*.[11] The period of 6 months was fixed for giving direction to the Court to return the papers to the transmitting Court and time is not of the essence of the stipulation. As pointed out by Denman, J., in *Caldow* v. *Poxell*,[12] a balance should be struck as far as possible between the inconvenience of a rigid adherence to and an occasional departure from the terms of a statute and it should be the paramount concern of the interpreter to avoid defeat of justice by a too rigid adherence of the time limit. The effect of holding that the sub-Court was *functus officio* after six months would be to allow the judgment-debtor to escape liability, a contingency not to be permitted except when there was no escape from it.

3. In the Privy Council case already referred to, it was proved that there was no revision of old jurors' lists as required under the very elaborate and minute enactments in the statutes of Quebec for the constitution of a Revising Board to revise the jury lists annually and that the same had been neglected for several years previous to 1912 when the trial in the first Court commenced. It was contended that the trial conducted with such a jury was *coram non judice** and should be treated as a nullity but their Lordships discountenanced such an argument and held the verdict of the jury valid. Their Lordships held that the object of the elaborate provisions were (*i*) distribution of Jury Service equally between all who were liable to render it, (*ii*) the securing of an effective list of jurors for the

(11) *Veliappa* v. *Subrahmanyam*, 39 M. 485.
(12) (1877) 2 C.P.D. 562.
*A suit decided by a Court having no jurisdiction.

use of Courts by omitting the names of the dead, the absent and those exempted under the law, (*iii*) the avoidance of the packing of the jury, and none of the objects had been defeated in this particular case. The statutes themselves did not contain any enactment as to consequences of non-observance of the provisions and it would cause the greatest public inconvenience if the verdicts of juries were made *ipso facto* null and void by a neglect to observe their provisions and if it necessitated the postponement of trial till valid lists were prepared. 'It does far less harm to allow cases tried by a jury formed *from an unrevised old list* with the opportunities there would be to object to any unqualified man called into the box, to stand good; their Lordships observed, 'than to hold the proceedings null and void'. The case in *Grose* v. *Holmes Electric Protection Company*,[13] was distinguished on the ground that in that case the very mischief was committed for the prevention of which the statute was passed, viz., the packing of the jury but where no prejudice was caused as in this and where none of the safeguards prescribed for securing fair and impartial juries had been weakened there was no need to interfere with the validity of the trial. In Lahore again, it was pointed out with reference to the non-compliance with the provisions of Order 21, Rule 85 which are mandatory that the disregard of the same would not lead to a nullification of the proceedings to which the proviso related on the principles above stated. The three-fourths purchase-money was tendered in this case within the time required by law but the same was not accepted by Court on account of the

(13) Q.R. 9, S.C. 374.

pendency of an application objecting to the validity of the sale which was not disposed of till much later.[14] On similar grounds the provisions of S. 87 of the Rangoon Port Act (IV of 1905) requiring the owner to deposit the charges due to the Commissioner were held to be permissive and not imperative.[15]

4. In *Mathura Mohan Saha and others* v. *Ramkumar Saha and Chittagong District Board*,[16] already referred to, however, it was held that Rule 98 was framed under Ss. 20 and 138 (*d*) of the Bengal Act (III of 1885) for the purpose of regulating the powers of the District Board to transfer property and was imperative and not merely directory and the transfer of immovable property by way of sale in a manner other than that prescribed under the rules was invalid. It was pointed by Justice Mookherjea that Rule 98 read with Rule 93 did not leave any room for doubt as regard the intention of the Legislature that it was intended to be so. And this was stated to be the effect notwithstanding that there were no negative words in the statute declaring that all transfers in any other form were to be null and void. The reason for holding the formalities enjoined by the rules mandatory is stated by Lord Bramwell in *Young* v. *Mayor of Leawington Corporation*.[17] 'The Legislature', his Lordship observed in that case, 'has made provisions for the protection of rate-payers, shareholders, and others who must act through the agency of a representative body requiring the observance of certain solem-

(14) *Nathumal* v. *Malawamal and others*, 1931 L. 15.

(15) *A. B. Moola and Sons* v. *Commissioner for the Port of Rangoon*, 1931 R. 95.

(16) 43 Cal. 790=1916 Cal. 136.

(17) (1883) 8 App. Cas. 517.

nities which involve deliberation and reflecton. That is the importance of the seal. It is idle to say there is no magic in a wafer. It continually happens that carelessness and indifference on the one side and the greed of gain on the other cause a disregard of those safeguards and improvident engagements are entered into ..... The decision may be hard in this case on the plaintiffs who may not have known the law. They and others must be taught it which can only be done by its enforcement'. The 39 Madras case already cited where a similar provision was held to be directory only has to be distinguished on the ground that the prohibition in that case was directed against the directors but not against the Bank and as the case itself suggests the conclusion in that case would have possibly been otherwise if it was directed against the public body itself. The non-observance of the regulations for the conduct of the elections under S. 173 of the United Provinces District Boards Act (1922) did not invalidate the election as the non-observance is of a character that does not cause real injustice and the aim and object of the Legislature were in no way defeated thereby.[18]

5. **Partly Directory and Partly Mandatory.**—It often happens that a part of the statute may be mandatory while the rest of it only directory even though the language employed may be the same or similar. A familar example of such statutes is the English Public Health Act of 1848 which contained a provision that contracts exceeding £10 should be sealed with a seal of the Board and another that there should be an estimate

(18) *District Board Kheri and another* v. *Abdul Majid Khan and another*, 1930 **Oudh 434.**

prior to the execution of the works referred to therein. The former was held to be mandatory but the latter only directory being in the nature of a direction or instruction for the guidance of the Boards and not a condition precedent essential to the validity of the contract.

6. **Cases from the C.P.C.**—The Civil Procedure Code contains provisions which are mandatory in form but whose real character as imperative or directory depends on the character of each particular provision and the object it is intended to subserve. Thus the rule requiring a judgment to be pronounced was held to be mandatory though the rules as to the manner of doing it were only directory and their non-observance afforded no ground of reversal of a judgment in the absence of prejudice.[19] The omission to give notice under O. 21, Rule 22 renders the sale held in Execution Proceedings absolutely void and not merely voidable though if notice was given though to a wrong legal representative the Court gets jurisdiction and the sale becomes voidable and not void. An order under Order 21, Rule 63 even if one passed without investigation if not set aside within an year becomes conclusive.[20] The absence of a notice under Order 21, Rule 66 does not by itself vitiate an execution sale though it may be a material irregularity and the sale can be set aside only if substantial injustice has been the result thereof even though the language of the rule is mandatory. Likewise is the effect of the rule requiring the specific mention of the time and place of sale.[21] Likewise Order 21,

(19) 51 I.C. 405=46 C. 978.
(20) 41 M. 985.
(21) 7 All. 676=1927 R. 84 at 85.

Rule 89 which enjoins a deposit of 5 per cent. of the purchase-money for payment to the decree-holder, is in the nature of an indulgence to the judgment-debtor and the applicant who seeks to set aside a sale on the strength of the concession thereby afforded should strictly conform to the requirements and a sale would not be set aside without a strict compliance of its conditions.[22] A part payment and undertaking to pay the balance is not a valid deposit. Where the deficiency was due to a wrong calculation made by an officer of Court and the deficit amount is made up by the applicant as soon as the mistake is pointed out to him the deposit was held to be good though made after time as the mistake of an officer of Court ought not to affect a party.[23] It would be otherwise if the party himself commits a mistake.[24] Although the leave of Court is a condition precedent for a decree-holder bidding for property under Order 21, Rule 72 still the sale without such permission is not void if not set aside as provided in sub-Rule (3) of the section. The rule prohibiting (from bidding) any officer or any other person having any duty to perform in connection with any sale did not invalidate the sale at which a pleader had bid though it was said his conduct would be open to grave censure. The rule requiring the deposit of 25 per cent. of the purchase-money under Rule 84 is imperative and it was held the Court could not extend the time for payment of the deposit.[25] It has been also held that the irregularity due to non-compliance with the provisions of Rule 66 can be waived and a person who has so waived the

(22) 21 M.L.J. 631=9 I.C. 937=(1911) 2 M.W.N. 143.

(23) 1921 B. 169=45 B. 1094=62 I.C. 104.

(24) 26 C. 449.

(25) 30 I.C. 230.

irregularity is estopped from subsequently raising any objection in respect of the same[1]. Such a waiver may be the consequence of bidding at a sale held with such irregularities. The reason of the rule is that every one has a right to waive the benefit or advantage of a rule made solely for his benefit and protection. Such rules may be neglected without in any way infringing public rights or the public policy. *Cuilbet licet renuntiare juri pro se introducto.* Every one has a right to waive and agree to waive the advantage of a rule or law made solely for his benefit. A person can waive the benefit of the Limitation Act and Art. 75 of the Act affords an illustration where the Act itself refers to and provides for availing one's self of the benefit of waiver.

7. **Cases relating to Jurisdiction an Exception to the rule of waiver.**—There are two exceptions to the rule that a man can deny himself the advantage of a benefit conferred by a statute or designed for his advantage. The first is the case where the inherent jurisdiction of a Court is concerned and the other is a case where a state of things is laid down as a condition precedent by the statute itself as indispensable for a Court being seized of jurisdiction. The first exception is expressed by the familiar rules that consent cannot confer jurisdiction and that there cannot be an estoppel against a statute. It was held in *S. Subbarao and others* v. *N. Perumal Reddi and others*[2] that on a point of principle the doctrine of *res judicata* could not be applied to questions of jurisdiction and that a jurisdiction created by a statute can be determined only by the statute. The Privy

(1) 12 M. 19=15 I.A. 171.

(2) 1918 M. 988=1917 M.W.N. 318.

Council has pointed out in a number of cases[3] that any amount of consent or waiver cannot confer jurisdiction on a Court which does not possess it nor can jurisdiction be conferred by an estoppel operating between the parties; the same applies to a plea of *res judicata* which is a species of estoppel, an estoppel by judgment. As pointed out by Justice Krishnan, 'Jurisdiction is the very foundation which entitles the Court to deal with a particular case and dispose of questions arising in it between the parties..... it cannot be conferred or affected by any estoppel between parties but is matter the Court has to decide for itself ..... A Court cannot be compelled to try a case which it has in reality no jurisdiction to do by preventing the parties from proving the facts which show it'. It was pointed out that if consent could confer jurisdiction provisions like S. 189 of the Madras Estates Land Act which bar the jurisdiction of Civil Courts over matters relating to rent due by a 'ryot' to a 'landholder' as defined therein could be easily nullified and rendered inoperative by the collusive filing of such suits and getting decrees thereon in civil Courts. In a more recent case[4] the above decision was explained and distinguished as being applicable to cases where there was an inherent want of jurisdiction and it was laid down there that while there could be no *res judicata* in such cases there was another class of cases where the Court had inherent jurisdiction to entertain a matter and then decide on the evidence adduced whether it has jurisdiction or no. In the latter class the finding of Court

(3) *Ledgard* v. *Bull*, 9 All. 191=13 I.A. 134 (P.C.); see also *Minakshi Naidu* v. *Subrahmanya Sastri*, 11 M. 26=14 I.A. 160 (P.C.).

(4) *Yeruva Chinnappa Reddi* v. *Rai Bahadur P. V. Srinivasa Rao*, 69 M.L.J. 196=1935 M. 835.

as regards jurisdiction would be *res judicata* notwithstanding the decision was erroneous provided it had become final.

8. The second of the exceptions based on the principle that a private individual cannot waive—what the public policy requires, *Privatorum conventio juri publico non derogat,* may be instanced by provisions of S. 92 of the Civil Procedure Code relating to public charities. That section enacts that no suit claiming any of the reliefs specified in sub-S. (1) of that section regarding the removal, appointment, etc., of trustees, shall be instituted in respect of any trust referred to therein except by the Advocate-General or two or more persons having an interest in the trust after having obtained the consent of the Advocate-General. It was held that the objection as to want of sanction in such cases was one which went to the jurisdiction of the Court to entertain the suit itself and could not therefore be waived by the parties.[5]

9. Under the Criminal Procedure Code the examination of a complainant under S. 200 is a condition precedent to the entertainment of a complaint and the omission to record the sworn statement of the complainant is fatal to the validity of the criminal proceedings thereby started.[6] The object of the section is to prevent the issue of process in cases where the examination would disclose the falsity or the frivolous and vexatious nature of proceedings that follow. Again S. 342 of the Code enjoins the Court to question the accused generally on a criminal case after the evidence

(5) *Varaprasada Rao* v. *Gopalacharlu,* 1926 M. 970=97 I.C. 462=24 M.L.W. 419=1926 M.W.N. 626.

(6) 4 C.L.R. 134.

of the prosecution has been closed and before the accused is called on for his defence for the purpose of enabling the accused to explain the circumstances appearing in the evidence against him. In the trial of warrant cases there is no discretion left to the Magistrate whether he will examine the accused or no and forms prescribed by the statute have to be strictly observed and the Court cannot draw any inference of waiver against accused persons especially where the Court omits to perform a duty cast on it expressly for the benefit of the accused.[7] And it has been pointed out generally that criminal proceedings unless conducted in the manner prescribed by law are substantially bad and the defects cannot be cured by any consent or waiver on the part of the accused and as pointed out by Justice Macpherson in *Q.* v. *Bholanath Sen*[8] most prisoners in the mofussil not properly defended would assent to any irregularity which the trying Magistrate might choose to suggest and if such consent or waiver were held to warrant the committing of material irregularities in a trial there would be an end to all procedure. It has been held in another case that a prisoner on his trial can consent to nothing at all.[9]

10. Where however a condition is attached to the performance of a thing which is impossible of performance or impracticable of fulfilment the observance of the same will be deemed to be unnecessary and will not affect the validity of the thing done. *Lex non cogit ad impossibilia.*[10]

(7) 9 Bom.L.R. 356.

(8) 2 C. 23 at 30.

(9) 36 L.J.P.C. 51=12 W.R. 3.

(10) Maxwell, Interpretation of Statutes, p. 327 (7th Edition). See *Emperor* v. *Ganpat Lakshman*, 40 Bom.L.R. 820.

CHAPTER III.

Doctrine of Ejusdem Generis.

1. Another example of the control of statutory language by surrounding language and circumstances is illustrated by what is comprehensively known as the *ejusdem generis* doctrine which has been constantly applied by the Indian High Courts in their construction of statutes. Bacon states the rule thus, "all words whether they be in deeds or statutes or otherwise, if they be general and not express or precise shall be restrained unto the fitness of the matter or the person."[1] The same thing has been expressed by Lord Campbell in his statement in *Reg.* v. *Edmundson* that where particular words are followed by general words the latter must be construed *ejusdem generis* with the former. The general words following the specific enumeration are confined in effect to *alia similia* preceding it. In such a case the full or ordinary meaning is not attached to the general words which would ordinarily be attached to them but it is restricted by the genus or class or category preceding them. On this principle it was held under English Law that in the expression 'corn-grass or other products' the generic term 'other products' did not include 'young trees' because the latter were not similar to grass and corn but were of a different category from the products specified[2] and in another case[3] arising under the Sunday

(1) Max. Reg. 10.

(2) *Clark* v. *Gaskarth*, (1818) 8 Taunt. 431.

(3) *Sandiman* v. *Breach*, (1827) 7 B. & C. 96=5 L.J. (O.S.) K. B. 298=9 D. & R. 796.

Observance Act of 1677 which enumerated tradesman, artificer, workman and labourer and these words were accompanied by the words 'any other person' it was held that the word 'person' in the latter expression was confined to callings of the same kind as those specified by the preceding words and accordingly did not include a farmer, a barber or a solicitor.

2. **Privy Council**.—The Privy Council applied this doctrine in a case reported in In the matter of *Sir Stuart Samuel*.[4] The case arose under (22 Geo. III, c. 45) an Act of Parliament of the year 1782 which declared that it was enacted to preserve the freedom and independence of Parliament and to prevent the sapping of that freedom by members being admitted to profitable contracts. The disabling provision in the construction of which their Lordships had to consider the doctrine recited that a member must have directly or indirectly undertaken a contract with "Commissioners of His Majesty's Treasury or of the Navy or Victualling Office or the Master General or Board of Ordinance or any one or more of such Commissioners' or 'any other person or persons whatsoever'. It was held that the class of persons mentioned in the first section were servants of the Crown in 1782 (the date of the Act) who were holding office in the British as contrasted with the Irish Government or any other Government of the British Dominions or Dependencies beyond the seas and the words 'any other person or persons whatsoever' should be read *ejusdem generis* with the preceding words and could only refer to any one who held office in the British Government of a kind similar to those enumerated before. In *Chajju Ram*

(4) 19 I.C. 765=17 C.W.N. 735.

v. *Neki and others*[5] the Privy Council held that any other sufficient reason in Order 47, Rule 1 of the C. P. C. means 'grounds at least analogous to those specified immediately before. The High Court of Rangoon has held that the word 'analogous' is wider than the expression *ejusdem generis*.

3. **Bombay**.—In Bombay it was held that 'other milk products' in S. 412 (*b*) of the Bombay City Municipal Act (III of 1888) should be read with the preceding words 'milk and butter' and did not include 'ghee' as the latter should not be interpreted in its comprehensive meaning as it would be interpreted if it stood by itself but should be construed along with the previous words and to bring it within the statute should be of the same class or nature as milk and butter. They include products which are the direct result of milk and are liable to speedy decay like butter, whey, curd, cream but not 'ghee' which is not the direct result of milk and is not liable to speedy decay. Both its durability and the use to which it was put, differentiated it from butter and excluded it from the class to which butter belongs.[6] The provision construed was of a general nature and that perhaps partly explains why it was construed so strictly. In *Gopal Purushottam and others* v. *Morar Punja*[7] 'any other law for the time being in force' in S. 10-A of the Deccan Agriculturists' Relief Act (XVII of 1879) were read *ejusdem generis* with the prior words which referred to S. 92 of the Indian Evidence Act and hence were held not to include the Registration Act. In re *Hussain Sahib*[8]

(5) 1922 P.C. 112=3 Lah. 127=43 M.L.J. 332 (P.C.).
(6) *Ratansi Hiraji* v. *Emperor*, 1929 Bom. 274.
(7) 20 I.C. 249.
(8) 30 I.C. 1004.

'other building material occurring in Bye-Law No. 54 following the words 'bricks, stone, and road metal' were held not to include sand as it did not belong to the category of material which had a 'potentially deleterious effect' on public thoroughfares, the object of the bye-law being the protection of public streets from obstruction caused by the falling out of the contents of moving carts. In the case of brick, stone and metal the obstruction was obvious, not so in the case of sand. 'Other sums payable' in S. 7 (1) and S. 7 IV (*c*) of the Court-Fees Act (VII of 1870) did not include 'rent' which should be read *ejusdem generis* with 'sums of money payable as maintenance or annuity'.

4. Genus essential for the application of the Doctrine.—It is necessary however, for the application of the doctrine that a genus or class should exist in the specific words preceding the general words. In other words the specific words employed should belong or be such as could reasonably be brought under one category. If they are so dissimilar, however, as to make them impossible to be brought under any one class, the doctrine has no application whatsoever, and the words should receive their full and ample meaning.[9] The intention of the Legislature being the primary thing that matters other doctrines become subordinated in cases where the former is quite clear and admits of no doubt or ambiguity. The doctrine should be applied with caution and should not be pushed too far as it is a presumption to be applied only when there are no other indications to read the mind of the Legislature as pointed out in *Anderson* v. *Anderson*.[10] This aspect

(9) *Tillmans and Co.* v. *S.S. Kirtsford*, (1908) 2 K.B. 385.

(10) (1895) 1 Q.B. 749.

was alluded to in a Madras case,[11] where their Lordships comment as follows: "Ordinarily, when several specific instances are mentioned followed by a general term with the word 'other' prefixed to it, where the rule of *ejusdem generis* is applied, the meaning of the general term should be settled with reference to all the terms preceding it. If so read in this case the 'other personal injuries' will include injuries similar to both defamation and assault. The only ground suggested for not giving the ordinary meaning to the word 'other' is that, it is hardly reasonable to speak of 'defamation' as 'a personal injury not causing death' that being the expression in the section. It may appear strange in ordinary parlance to do so. But it may be pointed out that 'assault' as defined in S. 351, I.P.C., is just as unlikely to cause death and so it will be equally strange to associate with it the idea of causing or not causing death". The learned Judges attempted ultimately to explain the words by pointing out that the scheme of the Act was to divide personal injuries into two categories (*i*) those that caused death and (*ii*) those that did not and assault and defamation were given as instances of injuries that appertain to the body and those that do not respectively. In a later Madras case[12] a somewhat similar question cropped up for consideration. The point that fell for consideration was whether a lease of land by Government falls under the description in S. 90 (1) (*d*) of the Indian Registration Act and is covered by the expression 'other documents or assignments by Government of land or of any interest in land'. Disagreeing with the judgment of

(11) 38 I.C. 823=31 M.L.J. 772=20 M. L. T. 303.

(12) *Hallingal Moose Kutti* v. *Secretary of State for India*, 37 M.L.J. 332.

the Allahabad High Court in *Mun H. Lal* v. *Notified Area of Babuat*[13] that held that the words should be read *ejusdem generis* with the preceding words 'sanads and inam title-deeds' their Lordships saw no ground for the application of the doctrine. Relying on *Angus* v. *Dalton*[14] it was pointed out that the first point to be decided was whether from the language of the section it could be definitely ascertained that there was a class of cases that was intended to be affected and till that was done no occasion would arise for the application of the doctrine. The object of the Legislature in enacting S. 90 was to enumerate the class of documents executed by or on behalf of the Government which were to be exempted from the operation of the Act and there was really no room for the application of the doctrine but if it was to be held applicable they were prepared to hold that a lease of land was of the same class as a sanad and the objection as to want of registration raised by the defendant was overruled. The general expression is not restricted to the last word preceding it but extends to the whole category enumerated in the prior expression.[15] In a more recent case the Bombay High Court commented on the too indiscriminate use to which the doctrine was put and emphasized the necessity to apply it with caution. The point for decision was whether two persons associated together for buying property and managing it so as to get an income are an 'association of individuals' within the meaning

(13) 36 All. 176=22 I.C. 933.

(14) (1878) L.R. 4 Q.B. 166.

(15) *Great Western Railway Company* v. *Swindon and Cheltenham Railway Company*, (1884) 9 App.Cas. 787 at 808=53 L.J. Ch. 1075; see also *Commissioner of Income-tax, Bombay* v. *Lakshmidas Devidas*, 1938 Bom. 41.

of S. 3 of the Income-Tax Act which imposes a tax on 'every individual, Hindu undivided family, company, firm and other association of individuals'. The Allahabad High Court in *Mufti Mahomed Aslam Khahfa Mandi* v. *Commissioner of Income-tax*[16] held that the words 'association' of individuals should be read *ejusdem generis* with the word 'firm' immediately preceding it but the Calcutta High Court in *Re B. N. Elias*[17] held *contra.* Beaumont, C.J., agreeing with the Calcutta view and dissenting from the Allahabad view commented as follows: 'The so-called *ejusdem generis* rule, which I cannot help thinking is sometimes misapplied in India is merely a rule of construction. When you have general words following particular words the general words are limited to things which are *ejusdem generis* with the particular words. But that rule being one of construction should never be invoked when its application appears to defeat the general intent of the instrument to be construed. Moreover I know of no authority of applying the rule to the last of the particular words preceding'. His Lordship observed that in the case before him the association of individuals mentioned prior to the general expression had not such a similarity of characteristics as could bring them all under a definite type and hence within the doctrine under consideration. A Hindu family was an association by birth; a company was a legal entity and a firm was an association depending on contract not in itself a legal entity and it was not possible to suggest an association of individuals that partook of the characteristics of the three types enumerated. The

(16) 1936 All. 817.
(17) 63 C. 538=40 C.W.N. 476.

object of the Act being the imposition of a tax on a body of individuals who get income, profit or gain by transacting business, the association of two persons who got income or profits was quite within the definition of S. 3 of the Act.[18] The removal of fraudulent trustees and the restraining of a contemplated breach of trust were on similar grounds held to come within the language of S. 92 of the Civil Procedure Code enabling the Court to grant 'such other and further relief as the nature of the case may require' after mentioning eight reliefs which were not at all of a class or confined to a category. The Court expressed itself somewhat in strong language against the wide application of the *ejusdem generis* doctrine in a Lower Burma Chief Court case. 'I am not myself' said Hartnool, Officiating Chief Justice, "and never have been much in love with the *ejusdem generis* doctrine. It is too vague. If it means anything more than a mere tautologus reaffirmation of what has gone before, it must mean so much more. What is relief of the like kind? Certainly not of a kind so like as to be practically identical. That would make the words mere surplusage. I would be disposed to think they meant 'such further and other relief' as from the nature of the introductory words and the exemplificatory cases appears to the Court to be appropriate in a suit of this kind."[19] A Full Bench of the Madras High Court refused to apply the principle to cases arising under S. 13, Cl. (*f*) of the Legal Practitioners Act, 1879, and held that 'misconduct' in that section was not confined

(18) *Commissioner of Income-tax, Bombay* v. *Lakshmidas Devidas*, 1938 Bom. 41=39 Bom.L.R. 910.

(19) *Mahomed Salay Naikwara* v. *Mulla Goolam Mahomed*, 23 I. C. 111.

to cases referred to in the preceding clause but, included other cases of misconduct basing its conclusion on the particular language of the section and the prior history of the Act.[20]

5. **Doctrine of Noscitur a sociis.**—Closely connected with the *ejusdem generis* doctrine in another called *noscitur a sociis* or the doctrine of associated words which means that where general words immediately follow or are closely associated with specific words their meaning is limited by the preceding words. Lord Hale defined the same by stating that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it.[21] In the Privy Council case reported in *Ramdas Vithaldas* v. *Amarchand, etc.*,[22] already referred to in another context a 'Railway receipt' was held to be an instrument of title within the meaning of S. 103 of the Contract Act notwithstanding the fact that one section employed the word 'document', and the other the word 'instrument' as they were both employed to indicate the same meaning the variation in language being more due to the carelessness of the draftsman than any intention on the part of the Legislature to differentiate between the two terms as is further evidenced by the fact that for words intended to import the same meaning, 'document showing title' was used in S. 108 and merely 'document of title' in S. 178 of the same Act. The use of apparently different words read with the context and the intention of the Legislature may not necessarily lead to the inference that they were used to

(20) 32 I.C. 326=39 M. 1045 (F.B.).
(21) Lord Kenyan in *Hayr Coventry*, 3 T.R. 83.
(22) 40 Bom. 630=1916 P.C. 7.

indicate different senses as the use of the same words in different parts of the statute though ordinarily conveying the same meaning[23] might where a contrary intention appears be construed in different senses. It was thus held by the Madras High Court in *Chidambara Nadar* v. *Rama Nadar*,[24] that Article 182 (2) of the Limitation Act applied to civil revision petitions and not merely to appeals understood in the narrow sense in which it is used in Articles 150 to 157 of the same Act. Sir Venkatasubbarao, J., pointed out that though the ordinary canon of construction was that the same words should bear the same meaning when they occur in different parts of the same statute the rule might be departed from where there were cogent reasons for such departure.

6. Maxwell refers to another rule of interpretation which is really a branch of the doctrine of *ejusdem generis, viz.*, that where words descriptive of a rank are enumerated in a descending order the general words employed at the end of the enumeration do not include those of the higher rank if there are lower species to which they can apply.[25]

(23) *Sripathi Charan De and others* v. *Kailash Chandra Jana*, 1936 C. 331. *Also* 23 I.C. 238 and 1939 C. 435 (F.B.).

(24) 1937 M. 385=(1937) 1 M.L.J. 453 (F.B.).

(25) Maxwell's Interpretation of Statutes, 1937 Edition.

CHAPTER IV.

Expressio Unius Doctrine.

1. And yet another rule that often comes into play and is applied in the interpretation of statutes is the maxim *expressio unius est exclusio alterius*, the express mention of one thing implies the exclusion of another.[1] This is closely connected with the maxim *expressum facit cessare tacitum*: what is expressed makes what is silent to cease. It has been held on the strength of this maxim that the expression of an affirmative implies a negative of what is not affirmed. This is, however, permissible only when it follows as a necessary and reasonable implication from the language employed in a statute. Where the Legislature expressly authorizes one or more methods of dealing with property such expression excludes other modes except those specially authorized therein.[2]

2. **Affirmatives do not negate their opposite.**— Affirmative words, however, if they stand alone without necessarily leading to the negative of what is not affirmed expressly or by implication cannot take away the existing right.[3] The rule referred to in the above paragraph cannot be applied universally or without limitation or qualification. The mention of a limited or lesser right does not take away a larger right. If the language of statutes was always accurate and precise and there was absolutely no room

(1) Co. Litt. 210.

(2) (1879) 16 Sup. Ct. N.S.W. 103.

(3) *Collector* v. *Lalchamani*, 21 W.R. 358 (P.C.).

for doubt or ambiguity the rule could be applied more freely and without fear of its being misused. It is not enough that the express and the non-expressed are merely incongruous. It should be established that they cannot reasonably co-exist. The rule has to be applied if at all with great caution and care. The failure to make the 'expression' complete arises partly from accident but more often from the want of skill on the part of the draftsman. Provisions of law enacted for particular cases cannot be applied universally or without qualification so as to alter the existing law. As has been put by eminent English Judges the doctrine is a good servant but a bad master and should never be applied so as to frustrate the object of an Act or of to bring about inconsistency or injustice. Lord Halsbury pointed out the reason for employing caution in the application of the doctrine in one of the cases where it was called into play.[4] 'It might be that modern statutes are drawn with greater particularity and minuteness. The misfortune in framing those statutes was that any body of persons, seeing a possibility of liability on their part applied to Parliament to have special provisions inserted for their protection. That application was occasionally complied with, and then the argument arose, which their Lordships had heard that day, namely that any body, who was not included in the enumeration of the particular persons so inserted must be taken to be excluded by the operation just because they were not included and others were. The doctrine applicable to all such cases was that a great many things were put into a statute *ex abundanti cautela* and it was not to be assumed that any body not specifically included was for

(4) *Ma Laughlin* v. *West Garth*, (1906) 75 L.J.P.C. 117=94 L. T. 831=22 T.L.R. 594.

that reason alone excluded from the protection of the statute.' Again provisions may be superfluous, redundant or may be repeated as a matter of extra caution but on that ground alone it cannot be said they were intended to take away general rights not mentioned in those provisions.

3. The Calcutta High Court accordingly held in one case that S. 50 (3) of the Bengal Tenancy Act was enacted solely with a view to secure benefit to raiyats and was by no means designed to prejudice tenure holders and that the operation of S. 50 (1) and S. 50 (2) was not to be deemed excluded in the case of tenures by reason of sub-division or amalgamation.[5] In another case it was pointed out that the maxim was not of general application especially when construing two different sections of a statute providing for two different contingencies.[6] It was held accordingly that S. 54 of the Provincial Insolvency Act which renders a fraudulent preference by the debtor void and attaches importance to the dominant motive of the judgment-debtor renders void such transactions on the proof of such motive but S. 53 declares all transfers void provided they are within two years of the order of adjudication and the good faith of the transferee saves the same whatever may be the motive of the transferor. The general words in S. 53 could not be controlled by specific mention of certain transfers declared void under S. 54. Justice Sir (then Mr.) Bhashyam Iyengar in a case arising under the Revenue Recovery Act (II of 1864) held the maxim was inapplicable to special and

(5) *Krishna Kamini Dasi and another* v. *Nilamadat Saha and others*, 1923 C. 66.

(6) Re *Narainda Sunderdas*: Ex parte *The Official Receiver*, 1926 Sind 133.

local enactments which did not profess to be a codification of any branch of the law or those which enacted 'imperfectly or for particular cases only' that which was already and more widely the law. His Lordship pointed out that superfluous provisions in such statutes must be deemed to have been inserted owing either to the ignorance of the Legislature or its being unmindful of the real state of the law or owing to a desire to be exceedingly cautious.[7] As was expressed by a Full Bench of the Calcutta High Court in *Midnapore Zamindari Company* v. *Hrishikesh*[8] the doctrine is at best an uncertain guide to the true meaning of a statute which must be decided by several other *criteria* and the surrounding circumstances.

(7) *Raja of Vizianagaram* v. *Raja Satrucherla Soma Sekhara Raj*, 26 M. 686.

(8) 1914 C. 757=25 I.C. 562.

CHAPTER V.

Computation of Time.

1. Expressions used with reference to computation of time have often raised problems of interpretation, *e.g.*, whether the particular date mentioned in an expression is to be included or excluded and generally speaking what is the duration of time denoted by such expressions. In the matter of reckoning time each case must depend on its own circumstances and the subject-matter dealt with.[1] A calendar month or year has been held to be a period of time running from one day in a month or year to the corresponding day in the next and to exclude from the reckoning the day from which the month or the year is calculated, the principle being that two days in the same year are not counted.[1-a] Similarly a debt becomes due at the last moment of the period during which it is allowed to be paid and limitation runs from the last day of such period. The last day for filing a suit is the day corresponding to that from which the period of computation commences whether it be an year or a number of years. Where the due date for payment of any sum is 11th April, the period from 12th April to 11th April of the next year inclusive of both days is one year. A difficulty arises in the case

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(1) In re *North*: ex parte *Hasluck*, (1895) 2 Q.B. 264=64 L.J. Q.B. 694=72 L.T. 854.

(1-a) *A. S. Gnanaprakasam Pillai* v. *F. S. Vaz*, 1931 M. 352=60 M.L.J. 293.

of a month consisting of less than 30 days, such as February (in cases where the limitation commences from a date such as 30th of a month) and in the case of months with 30 days where the period commences from a date such as 31st. As pointed out by Markby in his Elements of Law and in Mitra's commentaries on the Limitation Act, sixth Edition, page 287, bills at one month drawn on 28th, 29th, 30th or 31st January fall due on 28th February and in leap years on 29th February. Again an imprisonment for a month from the 5th of January comes to an end at 12 O'Clock on the night of the 4th February. Where 'clear days', some 'number of days' at least, 'not less than' a number of days, are mentioned both the terminal days are excluded.[2] Under S. 25 of the Limitation Act (1908) all instruments are deemed to be made with reference to the Gregorian Calendar. In a Nagpur case however, exception was made in cases where parties did not usually go by that Calendar.[2-a]

2. But the English Statutes have ascribed two meanings to the word 'from' preceding a date, (*i*) on and after that date, (*ii*) merely after that date, depending on the context and circumstances of each case. The first rule is that where the date marks the beginning of a definite period or there is a *terminus ad quem* as well as a *terminus a quo* the first day will be excluded as a rule. If the date mentioned marks the commencement of an indefinite period the first day will be included ordinarily. There may be cases where these rules are departed from but they depend upon the language

(2) For more instances, *see* Lecture VII of Mitra's Limitation Act, p. 287 (Sixth Edition), footnote and commentary at pp. 983 to 985 of Vol. II. See also *Ramachandra* v. *Lakshman*, 40 B.L.R. 892.

(2-a) *Seth Bhojraj* v. *Panda Shankar Nath*, A.I.R. 1922 Nag. 265.

and the surrounding circumstances. These rules are recognized by the General Clauses Act, 1897, as well as the Madras General Clauses Act (I of 1891).

3. A Special Bench of the Madras High Court had to consider the effect of the words 'from' a special date in 1924 Madras 257.[3] The Madras Amending Act (1922) of the Court-Fees Act contained the words 'amendments do come into force from the date of publication in the Fort St. George Gazette'. The matter assumed importance on account of enhancement of the rate of court-fees made by that amendment and the point that fell to be decided was whether the amendment came into force 'on and after' 5th May, 1922, the date when the notification was made, i.e. including the date of notification 5th May or it excluded that date and came into effect after that date. Chief Justice Schwabe stated the law on the point in the following terms: 'If the named date is the beginning of a defined limited period, *i.e.*, where there is a *terminus a quo* then *prima facie* the first day is included. Therefore from a named date means 'on and after that date' Justice Coutts-Trotter who agreed with the Chief Justice in the final conclusion arrived at remarked that no useful purpose would be served by drawing a distinction between 'from' and 'on' which according to him would certainly be the more obvious word if the inclusion of a named day is to be understood as having been clearly intended. There is no hard and fast rule in regard to the question whether a particular day should be deemed to be excluded or included. The first principle to be noted is that the law generally neglects fractions of a day and in interpreting expressions relating to the

(3) In re *Court Fees*, 1924 Mad. 257=45 M.L.J. 557.

duration or commencement of time the whole day will have to be taken into account and either excluded or included in its entirety. If a point of time is fixed it comes into operation at midnight of the preceding day 'at which or on which or from which and after which' the new state of things begins. In such a case his Lordship points out the statute is concerned only with fixing the *terminus a quo of a new state of law* which is enacted to continue in force till it is repealed in other words, is a case where there is a *terminus a quo* but not a *terminus ad quem*.[4] A second class of cases, his Lordship pointed out, were cases where the statute delimited a period by a beginning as well as an end. In such cases 'from' excluded the opening day and the words fixing the closing day would include that day also. In other words where in regard to a state of things expected to continue indefinitely the statute fixes the *terminus a quo* the ordinary rule is that fractions of a day should be neglected and the law takes effect from the earliest moment of the day on which it is enacted, *i.e.*, from the midnight of the day on which it is put into force. Where however the beginning and the end are indicated, *i.e.*, the *terminus a quo* and the *terminus ad quem* the former is to be excluded and the latter included in the calculation of the period for which the statute would be deemed to be in operation. In the Madras case it was accordingly held that the amendment came into force on the first second of the 5th of May, *i.e.*, from the midnight of the 4th of May and the plaints filed on the 5th of May were held liable to pay the enhanced court-fee as enacted in the amend-

(4) *Tomlinson* v. *Bullock*, (1879) 4 Q.B.D. 230=48 L.J.M.C. 95 =40 L.T. 459=27 W.R. 552.

ment. Justice Kumaraswami Sastri was of a different opinion and held that principles of English Common law should not be imported into India except as guides in the understanding of English words but his opinion was overruled by a majority of the Special Bench.

It may be stated, however, that the rules construed in this case were framed under S. 107 of the Government of India Act a statute passed by the British Parliament and the learned Chief Justice, one of the deciding Judges was of the opinion that the English Interpretation Act applied and not the General Clauses Act though Justice Coutts-Trotter was of opinion that the determination of that question was unnecessary for the purposes of the case. He pointed out however that it was more relevant to refer to S. 3, sub-S. (12) of the General Clauses Act which says, 'Commencement used with reference to an Act or Regulation shall mean the day on which the Act or Regulation comes into force'.

4. In a recent case[5] the Madras High Court held in construing the words '30 days of grace' provided for the payment of a premium, that the day following the due date was the first day of grace, following the decision in *McKenna* v. *City Life Assurance Company*.[6] It was pointed out that Rule 9 of the policy which confers a privilege and also imposes a penalty by way of forfeiture should be construed in favour of the assured and against the Assurance Company and the days of grace must *prima facie* be deemed to be in addition to

(5) *T. G. Rajan* v. *The Asiatic Government Security Life Assurance Company*, (1938) 2 M.L.J. 1020.

(6) (1919) 2 K.B. 491.

the date already provided in the policy. In another case the same High Court held that the word 'by' indicates the utmost limit of time, the end or the expiry of the date or period indicated and that a Court was not entitled to dismiss an execution application on 11—10—1921 for failure to file sale papers which were directed to be filed 'by' that date.[6-a]

5. When a statute does not specify the limit of time within which a thing should be performed on the happening of an event the thing should be performed either immediately or within a reasonable time after the happening of the event.[7] When parties are prevented from doing a thing not by their own default but by the mistake of Court itself they are entitled to do it at the first subsequent earliest opportunity.[8] Where under the terms of a compromise, parties agreed to deposit a sum by the 30th of a month when that month contained only 29 days, it was held the deposit made on the first of the next month was in order.[9]

(6-a) *P. C. Muthuchettiar* v. *Narayana Chettiar*, 51 M. 672=1928 M. 528.

(7) 20 All. 267 at 294=25 I.A. 54=2 C.W.N. 273 (P.C.).

(8) *Sankara Unni* v. *Kummakatti Ezhuran Kandan's Son Raman*, 1925 M. 743.

(9) *Chand Meah* v. *Mohummud Muzzafar Howldar*, 1926 C. 1232.

CHAPTER VI.

General Clauses Act 1897.

1. The General Clauses Act 1897[1] consolidating the prior Statutes of 1868 and 1887 was passed with the object of shortening the language of statutory enactments and providing for uniformity of expression in cases where there is identity of subject-matter and for facilitating uniformity of construction in Indian and English legislation where both deal with the same subject-matter. It is a sort of legislative dictionary for India and closely follows the provisions of the English Interpretation Act, 1889, both having been drafted by Sir Courteney Ilbert. Besides defining several terms and expressions of general occurrence in the British Indian statutes it enacts that the definitions of some of the words in S. 3 of that Act apply to Acts of the Governor-General in Council after a specific date in 1868 and Regulations after a specified date in 1887 and that certain other specified definitions shall apply to all future legislation except where there is anything repugnant to the said definitions in the subject or context of the future Acts.

2. The well-understood general rules of construction as are applied in the construction of British Indian statutes are laid down in Ss. 5 to 13-A. Statutes which do not contain in themselves the dates when they come into operation come into force on the day on which they

(1) *See* Appendix.

receive the assent of the Governor-General and in cases where they are reserved for the assent of His Majesty on the date the assent is given by His Majesty. Acts or Regulations of the Governor-General in Council come into operation immediately on the expiration of the day preceding its commencement. The effect of repeal of statutes is stated in S. 6 especially its non-retrospective character and S. 7 declares that an express statutory declaration is necessary for the revival of a repealed enactment. Rules for the construction of reference to repealed and re-enacted enactments of the Indian Legislature as also of Parliament are laid down in S. 9. A reference to a repealed provision has to be construed as a reference to the re-enacted substitute. S. 9 enacts that the use of the word 'from' excludes the first of a series of days or any other period of time and use of the word 'to' includes the last in a series of days or any other period of time and makes the same applicable to future Acts as under S. 4. S. 10 deals with cases relating to computation of time and enables acts or proceedings directed or allowed to be done on a certain day as done or taken in due time, if they are done or taken on the next day if the Court or office where they have to be taken or done on the day specified or the last day of any prescribed period when they have to be done or taken happens to be a holiday or the Court or office is closed, an exception being made in cases to which the Limitation Act applies. This section is applicable to legislation passed after 1887. The measurement of distances is to be made in a straight line on the horizontal plane under S. 11. S. 12 provides for *pro rata* levy of any duty of customs or excise where the nature

of the levy is indicated in a statute relating thereto as being any quantity by weight measure or value of any goods or merchandize. S. 13 enacts that the reference to masculine gender shall include a reference to the feminine and reference to the singular the plural and *vice versa,* unless there be something repugnant to such construction in the subject or context. S. 13-A inserted by Act (XVIII of 1919) declares that a reference to the Sovereign or the Crown refers to the Sovereign for the time being. Ss. 14 to 19 deal with powers and functionaries. A power conferred under the Acts or Regulations of the Governor-General in Council may be exercised from time to time (S. 14). A power to appoint a person or fill an office or execute any function may be made by name or by virtue of office (S. 15). A power to make an appointment includes the power to suspend or dismiss any person appointed under that power (S. 16). For the application of a law to a person or persons executing the functions of an office it is sufficient to mention the official title of the officer executing the functions (at the date of the statute) or that of the officer by whom the functions are commonly executed (S. 17). It is sufficient for the purpose of indicating the application of a law to the successors of any functionaries or of any corporations sole to express its relation to such functionaries or corporations (S. 18). The law relative to the Chief or Superior of any office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior (S. 19). These sections are applicable to prior Acts, those passed after 1868 in some cases, those passed after 1887 in others and in others to Acts after 1868 and Regulations after 1887. Ss. 20 to 24 deal with pro-

visions as to orders, rules, etc., made under enactments. Expressions used in orders, notification, scheme, rules, or by-laws enacted under powers conferred under statutes passed after the Act shall bear the same meaning as in the Act or Regulation conferring the power to frame the same. (S. 20). A power to issue notifications, orders, etc., includes a power exercisable in the same manner and subject to the same conditions a power to add to amend, vary or rescind the same (S. 21). S. 22 provides for the making of rules or by-laws and issuing of orders between the passing of the Act and its commencement and S. 23 lays down the procedure and the rules to be followed for the making of rules or by-laws to be made after previous publication. S. 24 enacts the continuing in force of orders issued under enactments repealed and re-enacted till suspended by orders issued under the latter Acts. The miscellaneous provisions include the application of the relevant provisions of the Indian Penal Code and the Code of Criminal Procedure to the recovery of fines under the Acts and Regulations (S. 25) the exemption from double punishment in respect of an act or omission which is an offence under two different Statutes or Regulations (S. 26) definition of service by post (S. 27) and the mode of citation of enactments or portions thereof (by title, short title, or the number of the Act and the year it is passed). S. 29 exempts construction of Acts made prior to the passing of the Act and S. 30 applies specified provisions to Ordinances under Indian Councils Act, 1861 or S. 72 of the Government of India Act, 1915 and S. 30-A relates to the application of this Act to Acts made by the Governor-General in Council and S. 31 to construction of references to Local Government of a Province.

3. The Provinces have separate General Clauses Acts[2] where they similarly define and lay down rules of construction to Acts passed by their Legislatures.

4. The definitions in the General Clauses Act have all to be read subject to the proviso that there should be nothing repugnant to the subject or the context in adopting them. As an instance it may be pointed out that S. 3, Cl. (39) of this General Clauses Act, 1897, defines 'person' as including a company or association or body of individuals whether incorporated or not but in its application to different statutes a conflict of judicial opinion has arisen as regards its applicability to a company or other artificial persons. In *Perumal Goundan* v. *Thirumalarayapuram Dhana Sekhara Sanka Nidhi, Ltd.*,[3] it was held that the Official Liquidator of a company is competent to apply for leave to sue as a pauper on behalf of the company under Order 33 of C. P. C., if the company is a pauper within the meaning of Rule 1, but the Calcutta High Court dissented from that view in *Bharat Abhyudoy Cotton Mills, Ltd.* v. *Maharajadhiraj Sir Kameswar Sing*[4] wherein it was held that reference, to "the necessary wearing apparel" in Rule 1 and the requirement of presentation of the pauper application in person pointed to the fact that 'person' could not include a limited company. It was observed that regard should be had to the setting in which the word occurred, and the immediate context in which it was used before applying the general legal presumption that 'person' includes 'Corporation'

(2) *See* Appendix.
(3) 41 M. 624=34 M.L.J. 421.
(4) 1938 Cal. 745.

which as laid down in *Pharmaceutical Society* v. *London and Provincial Supply Association*[5] could be easily displaced. To the same effect is the decision in *S. M. Mitra* v. *Corporation of the Royal Exchange Assurance*.[6]

(5) (1880) 5 A.C. 857.
(6) 1930 R. 259.

CHAPTER VII.

Incidental and consequential Legislation.

1. We have dealt in previous chapters with cases of statutory language where it is imperfect or means something more or less than what it purports to enact and seen that in all such cases the governing factor for an interpreter is to seek and find out the true intention of the Legislature however imperfectly expressed and to give effect to such intention. They do not exhaust, however, the exceptions to the ordinary rules of interpretation. There would still be left cases where the Legislature has not expressed its intention by any language employed by it but where it is obvious some intention should be attributed to it if the intention expressed by its language is to be carried into effect. It is obvious that the law cannot make provision against all cases that may possibly arise or enumerate all the incidents and consequences flowing from the enacted portion of a statute.[1] An enabling statute gives power by necessary implication to do everything indispensable for the purpose of carrying out the purpose it has in view.[2] A command to do a thing implies everything by which it can be accomplished.[3] It is scarcely possible for the Legislature to contemplate all possible cases that are ever likely to arise or suit its language so as to meet them all. It can at best cover all cases that

(1) *Kuber Sing* v. *Bachwram*, 1925 Oudh 128.

(2) Craies on Statute Law, p. 227, 3rd Edn., quoted in *Gopalaswami Chettiar* v. *Secretary of State for India in Council*, 65 M. L. J. 518 at 521.

(3) 5 Co. 116.

frequently occur.[4] As *Scott* v. *Legg*[5] points out 'whenever a case is clearly within the mischief the words must be read so as to cover the case, if by any reasonable construction they can be read so as to cover it' and though the words may point more exactly to another case, this must be done rather than make such a case a *causus omissus* under the statute. In *Dutton* v. *Atkins*[6] it was pointed out that the mere refusal by the parent to produce a child for vaccination could not prevent the operation of the Vaccination Act of 1867 simply because the Act only provided for the summoning of a parent to appear before a Justice with the child and ordering the child's vaccination and made no provision for the contingency of the non-appearance or refusal to appear on the part of the parent. The non-production of the child or its refusal did not take away the right of the Magistrate to order vaccination though it necessitated his examination of other evidence to find that the child had not been vaccinated. It is the duty of a judge to apply not merely what the express language of a Code enables him to do but to make a just application of all laws which appear to be contemplated within the express sense of the law or in the consequences that may be gathered from it.[7] As Justice Mookherjea has pointed out the exercise of incidental powers familiar in other systems of law is justified on the ground that it is essential for the effectual exercise of Jurisdiction.[8] When once a Court is found to have jurisdiction over a parti-

(4) *Ad ea quae frequentius accidunt jura adaptantu* (2 Inst. 187).
(5) (1876) 2 Ex. D. 39.
(6) (1870) 6 Q. B. 373.
(7) (1868) 9 W. R. 402 at 406.
(8) *Hukum Chand Boid* v. *Kamalanand Sing*, 33 C. 927.

cular matter the jurisdiction continues till all the powers requisite for giving full and complete effect to the exercise of such jurisdiction are exhausted, in other words till the end of the law has been attained.[9] *Cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicare non potuit.*[10] A right to recover thus implies a right to sue. A right to inspect a bank register implies normally a right to take copies.[11] A power to dismiss an application carries a right with it to restore the same.[12] When a Court is justly possessed of jurisdiction it invests the Court with all necessary powers and obligations by implication. Thus a right to grant an injunction carries with it the right to punish disobedience of the same, and the making of by-laws the right to attach a penalty for their infringement. The right to execute a work carries with it the right to meet its expenditure. A right to cut trees carries a right to enter the land on which they stand and remove them. A right to construct and maintain a work carries by implication an exemption from liability for damage in the absence of negligence. The law not merely grants implied powers but also casts implied duties where they are necessary to be discharged to fulfil the obligations arising under the statute. The right to apply a law to all the incidents and consequences flowing from it is circumscribed however to only the necessary incidents and the reasonable and logical consequences arising from it. The extension of its powers by a

(9) Wells, Jurisdiction of Courts, Chapter XVII.

(10) When an act confers jurisdiction, it impliedly also grants the power of doing all such acts or employing such means as are essentially necessary to its execution.—*Maxwell.*

(11) Maxwell, Interpretation of Statute, Chapter XII, p. 30.

(12) *Harising* v. *Bulagi Mal and sons and another*, 1930 L. 20.

Court to embrace the direct consequences of any legislation should be based on sound general principles and not on principles in conflict with them or of the intentions of the Legislature.[13] The exercise of the powers should be done with regard to the other provisions in the Act and so as to cause no more injury or mischief than is actually called for. Where there are other and less injurious ways of doing a thing they should always be resorted to. It has been held that a legislative body has the right of removing persons who obstruct the deliberations of that body but it does not confer a right to punish the offenders.[14] The vesting of a property in a local body does not carry with it a right to dispose it of or to use it for purposes other than that for which it is vested.

2. Implied rights carry with them implied obligations as well. A right to dig up a ground for constructing a drain necessarily compels the body on which the power is conferred to fill it up after the purpose is over. A right to construct a bridge involves the duty of giving notice to the public whenever it has any defect or is under repairs. The nature of the statute, and the object with which it is framed, should be the guides for judging what are the implied duties and what the implied obligations arising in each case and on whom they are cast. Where the interests of third parties are permitted to be interfered with by a statute, the powers carry an obligation on the judicial bodies enforcing them to observe natural rules of justice and the sound rules of procedure such as the issuing of a notice and giving

(13) *Nanda Kishore Sing* v. *Ram Gopal Sahu*, 40 C. 955.
(14) *Keilley* v. *Carson*, 4 Moo. P. C. 63.

of an opportunity to be heard and to defend themselves according as the circumstances may require.

3. In modern legislation, however, instead of leaving the implied powers and privileges, or the implied duties and obligations necessary for the proper effectuation of the main provisions of an Act to the province of the interpreter, the Legislature itself provides in the concluding part of each statute for rules being made by the Governor-General in Council or the Governor in Council or by the Imperial or Local Government as the case may be, to carry out all or any of the main purposes of the Act and not inconsistent with such provisions and also specifies in particular what are the particular matters, for which such rules have to be made and it also enables provision to be made for punishing the breach of such rules. A special procedure is prescribed for the valid enactment of such rules and by-laws. A draft is generally published in the local or the Indian Gazette, as the case may be, a time limit is prescribed for objections being made to the same by any one interested and the final rules or by-laws are published in the Gazettes with or without amendments as the Government may think fit and their publication has the effect of their being enacted as parts of the main statute. Provision is also made sometimes for the rules being placed on the table of the Legislative Council and the postponement of their becoming the law till the Council has approved the draft either with or without modification or addition and they are finally notified as approved by the Council in the respective Gazettes and thereafter acquire full force and effect. The local bodies brought into existence by the enactment of the Legislature are also given power to legislate by being

authorised to make by-laws not inconsistent with the main enactment or any other law, for all matters expressly required or allowed by an act to be provided for by such bye-laws and in general for such purposes as advance the purpose for which the local bodies are brought into existence. The local body concerned is also authorised by such by-laws to provide for the punishment of their breach and the amount of fine or penalty to be levied is also specified. The same procedure is observed in the making of the by-laws as in regard to the rules with the difference that the local body itself is empowered to consider objections or suggestions that may be made in respect of the draft by-laws after their initial publication and within the time such objections or suggestions are invited and their final publication is made in the District Gazette or in some cases the lapse of some months after their publication as such both in English and the Vernacular of the place where the local body may function or happen to have jurisdiction gives them validity and full effect.

4. The subsidiary legislation that in modern times takes the place of implied enactment of former times is restricted however to the four corners of the authority enabling its being passed. It is completely subject to the controlling statute and also to the limitations under which it is permitted to be exercised. It cannot be inconsistent with the main enactment nor *ultra vires* the legislative power conferred in specific terms under the statute. The regulations passed cannot under any circumstances abridge or impose unreasonable conditions on a right conferred by the main enactment.[15] Thus the necessity to issue a notice

(15) *Raghavulu Naidu* v. *Corporation of Madras*, 59 M.L.J. 650.

made obligatory under the main Act cannot be dispensed with under a by-law framed under it.[16] A responsibility cannot be cast on the owner of a building in regard to the act of his tenant by framing a by-law contrary to the tenor of the principal Act under which the subsidiary by-law is framed. Unless the parent Act itself authorizes such a notification, a notification having a retrospective effect cannot be issued and would be clearly *ultra vires*.[16-a] The rules or by-laws framed should under all circumstances be just and reasonable and under no circumstances *ultra vires* of the parent act. So long as the local body has acted within the terms of the statute conferring jurisdiction on the local body, the High Court would not interfere with the discretion exercised by that body in acting according to the by-laws framed under it.

5. In the matter of procedure the Civil Procedure Code (Act V of 1908) with subsequent amendments regulates the procedure to be followed in all cases arising for determination in the civil Courts in the country except such as are specifically excepted from its operation either under that Code itself or by virtue of any of the provisions of the special or local laws that may contain special provisions regarding the procedure to be followed in the enforcement of the same. S. 4 of the C. P. C. provides that nothing in the Code shall be deemed to limit or otherwise affect any special or local law or any special jurisdiction or power conferred or special form of procedure prescribed by or under

(16) *Narayan Chandra Chatterjee* v. *The Corporation of Calcutta*, 11 C.W.N. 614.

(16-a) *G. P. Stewart* v. *Brojendra Kishore Roy Chaudhury*, 1939 C. 628.

any other law in force. As in the case of substantive law so in the case of procedure the Courts are given wide and ample jurisdiction to do justice between the parties by interpreting the provisions in such a manner as carry into effect the intention of the legislature. S. 151 of the Code lays down that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such order as may be necessary for the ends of justice or to prevent abuse of the process of Court. It thus confers a jurisdiction on Courts for matters for which there is no express provision but which have to be dealt with in the usual course of the administration of justice. It would be almost impossible to make express provision to cover cases of all inconvenience which may be infinite in number or such as can regulate events and circumstances for all time to come.[17] Unless an inherent power is thus conferred on Courts to make up for what is expressly enacted there would be cases where parties may be left without any redress on the one hand or the rules are liable to be abused and thus obstruct instead of facilitating the administration of justice. It is a dangerous principle to assume that what is not clearly allowed or provided for by an Act should be deemed to be prohibited. On the other hand every procedure is to be deemed permissible so long as it is consonant with rules of natural justice and fairplay till it is proved to be prohibited under any rule.[18] In two leading cases of the Calcutta High Court cases where the inherent powers of Courts were or could be exercised

(17) *Kuber Sing* v. *Bachuram*, 1925 Oudh 128=80 I.C. 444.

(18) *Narasingh Das* v. *Mangal Dubey*, 5 All. 172, *Per* Mahmood, J.

have been enumerated.[19] Courts have always held that they possess inherent jurisdiction to make orders *ex debito justitiae* so that real and substantial justice may be done between the parties for which alone the Courts exist.[20] In a case in which a Subordinate Court refused to set aside a sale though both the parties to the litigation pressed for it, the Chief Justice Sir Lawrence Jenkins remarked, 'The learned Judge before whom this reasonable application was made seems to have felt that his action was paralysed because this particular predicament did not fall within the precise words of Rule 89 onwards of Order 21. But I venture to think that when a case of that kind arises it certainly is open to the Court not to confirm the sale and to treat the sale as being of no effect that being the concurrent wish of, the parties and the obvious requirements of the case.'[21] In another case from the Calcutta High Court the difficulty cropped up as to how the costs portion of an order dismissing an application for leave to appeal to the Privy Council was to be enforced as there was no provision for executing the same, but their Lordships pointed out that the Civil Procedure Code was not exhaustive and that if the Court had power to make an order as to costs it undoubtedly carried with it the right to carry that order into effect.[22] As Justice Woodroffe pointed out in *Hukum Chand's case* the Court's powers are always equal to its desire to do that which it believes to be just and under no circumstances could he believe that a Court ought to fold its

(19) *Hukum Chand* v. *Kamalananda*, 33 C. 927 and *Nandakishore Singh* v. *Ram Golam Sahu*, 40 C. 955.

(20) *Kuber Sing* v. *Bachuram*, 1925 Oudh 128.

(21) *Ram Prasad* v. *Ram Charan Sing*, 27 I.C. 601.

(22) *Jogendra Chandresen* v. *Wazid-un-nissa Khatun*, 34 C. 860.

hands and perpetrate injustice. The language of S. 9 of the Cotton Duties Act (II of 1896) which states that 'the Collector shall assess the duties payable in respect of the period to which the return relates' came up for consideration in another case and the question arose as to whether an assessment to the duty could be made in the absence of a return from the mill owner as required by S. 8 of the Act as an essential part of the procedure laid down under the Act. The Court held however, that the absence of such a return did not take away the jurisdiction of the Collector to assess the duty as the return was called for only to facilitate the assessment but was not an essential prerequisite for it and that even otherwise the liability to pay the duty was clear and it was improper to conclude that no power existed of realising the same.[23]

6. This inherent power should however be exercised neither arbitrarily nor capriciously nor against the express terms of the Code.

(23) *Gopalswami Chettiar* v. *Secretary of State for India in Council*, 65 M.L.J. 518.

BOOK VI.

INTERPRETATION OF CONSTITUTION STATUTES.

CHAPTER I.

General Rules of Construction.

1. Rules to interpret Constitution Acts.—As in the case of General Statutes, so in regard to statutes embodying the constitution of a country there are well-recognized rules of interpretation. This is particularly so in the case of Federations whose constitution is generally contained in written organic instruments like the British North America Act framed to avoid disputes between the federation and the federating units as regards their respective powers and the ambit or the area where each is to exercise such power or carry on the government allotted to it. Such rules are not in essence different from the rules regulating the interpretation of general statutes[1] but are expressed in forms and language appropriate to, and their application conditioned by[2] the subject-matter and content of each particular constitution.

2. Golden Rule in interpreting Constitution Acts.—The chief principle in the construction of a constitution statute is that the statute or the written instrument itself ought to be looked to in the first instance

(1) *Webb* v. *Outrim;* 1907 A.C. 31; *British Coal Corporation* v. *King,* 1935 A.C. 500.

(2) In re *C. P. Motor Spirit Act,* 1939 F.C. 1 at p. 14 *per* Gwyer, C.J.

to understand and interpret it. As the Privy Council put it in a leading case on the subject, 'In the interpretation of a completely self-governing constitution, founded upon a written organic instrument such as the British North America Act, and the constitution of the Commonwealth of Australia, if the text is explicit, it is conclusive alike in what it directs and what it forbids. When the text is ambiguous, as for example, when the words establishing two mutually exclusive jurisdictions are wide enough to bring a power within either, recourse must be had to the context and scheme of the Act. Again if the text says nothing expressly, then it is not to be presumed that the constitution withholds the power altogether. On the contrary, it is to be taken for granted that the power is bestowed in some quarter, unless it is extraneous to the statute itself (as for example a power to make laws for some part of His Majesty's Dominions outside of Canada or Australia), or otherwise is clearly repugnant to its sense. For whatever belongs to Self-Government in Canada or in Australia belongs either to the Dominion or the Provinces in one country, or the Commonwealth or the states in the other'.[3] This principle is a very valuable canon of interpretation as it favours a broad construction of written instruments of government and is in effect a summary of the closely reasoned opinions of Marshall, C.J., in *Mc'Cullock* v. *Maryland*[4] and of Issacs, J., in the *Colonial Sugar Refining Co., Ltd.* v. *A. G. for the Commonwealth*.[5] It is not in-

(3) *A. G. for Ontario* v. *A. G. for Canada*, (1912) A.C. 571 at 583.

(4) 4 Wheaton 316.

(5) (1912) 15 C.L.R. at 245.

dispensable that any power should be traced to any specific conferment nor does it follow that because certain powers are conferred, others should be deemed to be necessarily prohibited. Thus to ascertain whether a statute violates a written constitution, the best method is to look to the terms of the instrument by which negatively the powers are restricted. If the legislation passed is within the terms or the general scope of the affirmative words which confer the power, and if there is no violation of any condition or restriction by which that power is limited 'it is not for any Court of Justice to inquire further or enlarge constructively those conditions and restrictions'.[6] This is the golden rule of constitutional interpretation, the rule of the literal and plain meaning.[7]

3. **Presumption in favour of Operative nature.**—Again the provisions of a constitution must be construed by the methods of construction and exposition applicable to other statutes[8] due regard being had to the propriety of the same and the object with which the Act has been passed by Parliament. A legislature ought not to be presumed to have exceeded its powers unless on grounds really of a serious character; in other words, the Acts of a Sovereign Legislature should receive such an interpretation as would make them operative and not inoperative as far as possible and one that should under no circumstances be subversive of the real intention of Parliament.[9]

(6) *Queen* v. *Burah*, 3 A.C. 889 at 904.

(7) *Osborne* v. *Commonwealth*, (1911) 12 C.L.R. at 360.

(8) *Bank of Toronto* v. *Lambe*, (1887) 12 A.C. 575=56 L.J.P.C. 87=57 L.T. 377.

(9) *Russel* v. *Queen*, 7 A.C. 829; *Edwards* v. *A. G. for Canada*, 1930 A.C. 124 at 137.

4. **Distribution of Powers enumerative.**—In the matter of the distribution of powers between the Federal Legislature and the Provincial or State Legislatures, the rule is that the distribution should be construed to be one of enumeration and not of definition and the extent of the power given should be gathered from the particular word used. Courts should always lean to a broad interpretation when the competition is between a broad and a narrow construction, except in a case where such a course would lead to a frustration of the object of an Act or the context compels a contrary course.[10] A general law applicable to many objects cannot be restricted to one only of its significations. A language of a general nature can only be modified or limited by necessary implication or reasonable intendment. General words should be understood in the wider or in the more restricted sense according to the general scope and object of the enactment.[11]

5. **Summary of the general rules.**—The following propositions summarise the rules of interpretation applied in the construction of the American, Canadian and Australian constitutions:—

(1) The language of the Constitution is to be construed like any other instrument in favour of the objects and purposes of the constitution. It should be kept in mind that constitution is a mechanism under which laws are to be made and not one merely declaring the law.[12] Accordingly where the language is wide enough to bring any power granted under the constitu-

(10) *Jumbuna Coal Mine Case,* 6 C.L.R. 365.

(11) Hardcask, p. 193.

(12) *Attorney-General for New South Wales* v. *Brewery Employees' Union,* (1908) 6 C.L.R. 469.

tion statute within either of two mutually exclusive jurisdictions recourse ought to be had to the context and the scheme of the Act.[13]

(2) In a scheme of Federation, each unit and the Federal Government is supreme in its own sphere, and neither should encroach on the powers of the other. There ought to be no colourable legislation.[14] Thus, it was held in a recent Privy Council case,[15] it was not permissible for a Provincial Legislature to impair or render wholly nugatory the exclusive legislative authority of the Dominion of Canada over the class of subjects mentioned in S. 91 of the British North America Act by taking recourse to a sort of discriminatory taxation by a highly selective measure imposing as tax a percentage of the paid-up capital, the reserve fund and the undivided profits of a company nor could the same be justified on the ground that it could be brought under S. 92 (2) of the Act as being 'direct taxation' raised for exclusively provincial purposes.

(3) Both the Federation and the units of which it is composed may exercise not only powers expressly granted, but also such incidental powers as flow from a specific power conferred.[16] As Chief Justice Marshall of the Supreme Court of the United States pointed out in *M'Cullock* v. *Maryland*,[17] so long as the end was legitimate and within the scope of the constitution all

(13) *Attorney-General for Ontario* v. *Attorney-General for Canada*, (1912) A.C. 571.

(14) *Attorney-General for Ontario* v. *Reciprocal Insurers*, 1924 A. C. 328; *A.-G. for Quebec* v. *Queen Insurance Co.*, (1878) 3 A.C. 1090.

(15) *A.-G. of Albeta* v. *A.-G. of Canada*, 1939 P.C. 53 at 56= 1939 M.W.N. 142 (P.C.).

(16) *A. G. for Ontario* v. *A. G. for Canada*, 1894 A.C. 189; also *Small* v. *Smith*, 10 A.C. 119 at 129; *A.-G. for the Commonwealth of Australia* v. *Colonial Sugar Refining Co.*, (1914) A.C. 237.

(17) (1819) 4 Wheaton 316.

appropriate means not prohibited by the spirit or the letter of the constitution but consistent with it are all constitutional. Accordingly in the above case the absence of an express power for the establishment of banks or the chartering of corporations in the constitution of the United States was held not to invalidate an Act authorizing their establishment. This does not apply however to cases where the end and the means are clearly marked out, where the use of means other than those specified for the attainment of the end or the use of the specified means for ends other than those authorized are virtually prohibited by such a strict demarcation. In other words, as was put in an Australian case,[18] the authority conferred may be taken advantage of to the full but can under no circumstances be exceeded. It is permissible to 'complement' a given power but not to 'supplement' it.

(4) A Constitution Act should be considered as a whole so as to give effect to all its powers. Each power should be considered to be part of a whole scheme.[19] In defining the limits of the powers of each of the Units, it should be borne in mind that it could not have been the intention of the legislature that a conflict should exist and to prevent an apparent conflict, the sections should be read together and the language of the one interpreted and if necessary modified by that of the others. The words used should not be read 'in vacuo' but as occurring in a complex instrument—the Federal compact— in which one part may throw light on the other.[20]

(18) *Australian Boot Trade Employees' Federation* v. *Whybrow and others,* (1910) 10 C.L.R. 266.

(19) *Citizens Insurance Co. of Canada* v. *Parsons,* (1882) 7 A.C. 96=51 L.J.P.C. 11=45 L.T. 721.

(20) *James* v. *Commonwealth of Australia,* (1936) A.C. 578.

(5) The interpreter is to look to the nature and objects of a particular power with the aid of contemporary history and to give to the words such operation as is consistent with its meanings so as to secure the purpose of the powers.[21]

(6) The true nature and character of the legislation is to be gathered by ascertaining the class to which it belongs. In other words the main substance of the Act is to be gathered from its terms. Motive is irrelevant and it is not the form that has to be looked to but its 'pith and substance', vide *A.-G. for Ontario* v. *Reciprocal Insurers*.[22]

(7) Words and powers should be interpreted according to the meaning they bear at the time of the framing of the Constitution.[23]

(8) Such construction should be placed on a statute as to make it valid.

(9) Where general or more comprehensive powers are conferred on one Government in a federation and less comprehensive and more specific powers are given to the other Government, the general powers shall be deemed to be curtailed to the extent of the specific powers specially conferred see *Parsons case*.[24]

(10) The same subject-matter may be exercised in different aspects, *i.e.*, when the fields of legislation of the same subject are clear and distinct. Neither the

(21) See *Prigg* v. *Pensylvania*, 16 Peters 610; also *Varden* v. *O'Laughlin*, (1907) 5 C.L.R. 215.

(22) 1924 A.C. 320 at 337; also *A.-G. for Canada* v. *A.-G. for Ontario*, (1937) A.C. 355=A.I.R. 1937 P.C. 89, quoted by Sulaiman, J., in 1939 F.C. 1 at 31; *Gallaghar* v. *Lynn*, (1937) A.C. 863 at 870.

(23) *A. G. for New South Wales* v. *Breweries Employees Union of New South Wales*, (1908) 6 C.L.R. 510; also *A. G. for Quebec* v. *Reid*, 10 A.C. 191.

(24) 9 A.C. 96.

Federal nor the state legislature would be *ultra vires*, even if they overlap if the field is clear for both. Else the Federal Legislature prevails.[25]

(11) To declare either legislation invalid, there should be positive conflict between two legislations.

(12) Where part of an Act of the Federal or the Provincial Legislature is *ultra vires* and the rest *intra vires*, the whole Act should not be deemed to be *ultra vires* but the valid part should be separated from the rest where it is so severable and given effect to.[1]

(13) In the interpretation of constitutional enactments it should be borne in mind by the interpreting Court that it is a cardinal principle of interpretation that each case should be decided for itself without entering more largely upon the interpretation of a statute than is necessary for the decision of the particular case.[2] As their Lordships of the Privy Council pointed out in *A.-G. of Alberta* v. *A.-G. of Canada*,[3] it is contrary to the well-established rules of practice to entertain or hear appeals that have no relation to existing rights created or purported to be created.

6. **Rules not exhaustive but illustrative.**—These propositions by no means exhaust all the prevailing rules on the subject nor can they be said to be universally applicable. The nature of the constitution that is reduced to writing and the terms of the Act which em-

(25) *A.-G. for Canada* v. *A.-G. for British Columbia*, 1930 A.C. 111; *vide also* observations of Leach, C.J., in *Mada Nagarathnam* v. *Puvvada Seshayya and another*, (1939) 1 M.L.J. 272 at pp. 296 to 298 (F.B.).

(1) *A.-G. for Ontario* v. *A.-G. for Canada*, 1925 A.C. 750; *Toronto Corporation* v. *York Corporation*, 1938 A.C. 415.

(2) *Citizens Insurance Co. of Canada* v. *Parsons*, (1882) 7 A.C. 96; *A.-G. for Canada* v. *A.-G. for Ontario*, 1937 A.C. 326.

(3) 1939 P.C. 53 at 55=1939 M.W.N. 142 (P.C.).

bodies that constitution, contemporary history, the existing laws, facts and circumstances at the time it was framed, may have all to be considered to arrive at a correct meaning of words or the real intention of the Legislature as expressed in its language. As pointed out in *Edwards* v. *A.-G. for Canada*,[4] it would be absurd to apply rules of interpretation applicable to penal or taxing statutes to an Act designed to regulate a parish and to apply such or similar rules without discrimination or a sense of propriety to a statute intended to ensure the peace, order, good government and progress in general of a Colony or a Dominion. To do so would be in effect a subversion of the real intent of Parliament. The growth and political advancement of a country require that its written constitution should be interpreted not in a 'narrow or pedantic' sense but in a broad and liberal spirit in relation to the new facts and vicissitudes of the country in its onward march and to 'illustrate and illuminate' the full import of the general words used in the Statute,[5] and giving the powers conferred therein the 'widest amplitude' permissible.[6]

7. **Two typical cases.**—Two typical cases one before the passing of the Government of India Act, 1935, and the other under that Act may be cited to show that the above principles have been as far as practicable applied in the interpretation of that statute and the Act of 1919, which it repealed.

8. **Bijni Succession Act case.**—The case reported in *Debendra Narain Roy* v. *Jagendra Narain Deb and*

(4) 1930 A.C. 124 at 137.
(5) *James* v. *Commonwealth of Australia*, 1936 A.C. 578 at 614.
(6) *British Coal Corporation* v. *The King*, 1935 A.C. 500 at 518.

others,[7] may be taken as a typical case under the Government of India Act, 1919, wherein several of the principles of interpretation by which that Act had to be construed were considered. The case dealt with the construction of the Assam Bijni Succession Act (II of 1931) which was passed during the pendency of litigation by two claimants regarding succession to the Bijni Zemindari and which was put forward as a defence to those suits. In holding that the Act was *intra vires* of the Assam Legislature their Lordships laid down the following propositions or rules of interpretation which they applied to the facts of that case in coming to the conclusion they ultimately did.

(1) Law is the declaration enacted by a legislature competent or empowered to enact it. It is not necessary that it should be a general law for all purposes for all Courts and for all places and things, but may relate to particular individuals.

(2) The golden rule of interpretation subject to the accepted exceptions to it governs the construction of constitution Acts as it does to other ordinary statutes.

(3) An Act though it may be local and personal in some of its aspects may none the less be a public Act. If the Act purports to determine the status of individuals not merely *inter se* but as governing their relations with others, the Act is a public Act and not a private Act. The difference between a public and private Act is that in the latter the rights of third parties are not effected even in the absence of a saving clause.

(7) 1936 C. 593=64 C.L.J. 212.

(4) Declaratory Acts are generally retrospective in their effect. Where the language is plain and unambiguous it is unnecessary to import any presumptions as to retrospectivity or otherwise. The absence of provisions as to costs or compensation in such case is not material.

(5) In interpreting statutes, proceedings of the Legislature, the statement of objects and reasons, and debates of the Legislature, or the Bill in its original form ought to be excluded from consideration.

(6) An Act should be interpreted according to the intent of the Legislature which passed it. Where it is ambiguous recourse to the preamble and the other parts of the Statute may be taken for guidance, but the preamble is not to be read as extending the provisions of the Act beyond the enacting part. The full title of an Act may be looked at but not the short title.

(7) All sections of the Act must be read together and any construction that does not fit in with the rest of the Act must be rejected and a construction which would harmonise it with the rest of the Act should be adopted.

(8) An Act should be confined to the specific purpose for which it is enacted and should not travel beyond its purview. Thus the Bijni Succession Act relates only to title based on Succession but does not affect or touch a claim based on adverse possession.

(9) The legislature can pass ex-propriatary legislation without making provision for compensation though it ordinarily does not.

9. **C. P. Sales Tax Act.**—The other case arose under the Government of India Act, 1935 and is the one reported in In re *Central Provinces Motor Spirit and Lubricants Taxation Act*.[8] The case arose out of the contention of the Government of India that a sale duty in respect of goods produced in India comes within the scope of S. 45 of the Federal Legislative List and that the Provincial Legislature could not invoke its power under Item 48 of the Provincial Legislative List and that the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, was accordingly *ultra vires* of the said Provincial Legislature. The Federal Court of India particularly the Chief Justice of India, Sir Maurice Gwyer, laid down the following rules of interpretation in regard to the interpretation of the relevant provisions of the Government of India Act, 1935:—

(*i*) The guiding principle in the interpretation of such statutes is that the meaning and intention of Parliament should be ascertained from the language of the statute itself, unconcerned with the motives of Parliament, the expediency of the Legislation passed, or any considerations of policy which actuated the passing of such legislation. The language however ought not to be stretched or perverted to support any legal or constitutional theory, to supply any omissions or correct supposed errors.

(*ii*) Constitutional enactments should be interpreted in a broad and liberal spirit and not in a narrow or pedantic manner with due regard to the fact that the constitution is a living and organic thing

(8) 1939 F.C. 1=(1939) 1 M.L.J.Sup. 1=43 C.W.N. F.C. 1.

entitled to be construed *ut res magis valeat quam pereat*. Courts are entitled to look at the real substance of the Act and not merely what it says.

(*iii*) Decisions of Canadian and Australian Courts, are not binding on the Federal Court of India (still less those of the United States of America) though they are entitled to consideration and respect and the Federal Court would deem its opinion to be "strengthened and confirmed" where its own judgment happens to be in conformity with such decisions. It is more particularly unsafe to rely upon the decisions of the said Courts in regard to the words employed in the Constitution of those countries, as being applicable without qualification to words in the Government of India Act, as words or phrases "take colour from the context and bear different senses" in different constitution Acts.

(*iv*) It is the primary duty of a Court however difficult it may be to ascertain in the first instance the degree and extent to which the authority to legislate in regard to any subject or specified class of subjects exists in the Central or the Provincial Legislature, in other words, to 'map out' the respective territories of the competing authorities on a reasonable and logical basis bearing always in mind that it could not be the intention of the legislature that there should be a conflict between them and to reconcile any apparent conflict between the competing authorities by reading together the sections conferring that authority and placing such a construction on the whole as would make it harmonize with the general Scheme of the Act and its 'method of differentiation between the functions and powers of the Centre and the Provinces'.

(*v*) An unqualified grant of a power standing by itself may be construed in a wide sense but where it is qualified by other express provisions in the same Act, the implications of the context and considerations arising from an examination of the general scheme of the Act have to be looked to.

(*vi*) Where a general power and a particular power come into conflict, the general power should not be so construed as to make a nullity of the particular power conferred by the same Act and operating in the same field but the former should be read in a more restricted sense so as to give effect to the latter in its ordinary and natural meaning.[9] The more general power conferred on the Federal Legislature should be deemed subject to an exception in the case of a particular power conferred on the Provinces.

(*vii*) A construction which would deprive a Province of an immense field of taxation in which the Central or Federal Government does not wish to compete seriously, ought to be avoided if possible.

(*viii*) The previous legislative practice at the time a constitution Act is passed can be taken into consideration in the construction of that Act, and it may reasonably be presumed that the Parliament used a word in a sense in which it was understood and used in the country to which the Act is intended to apply.

(*ix*) The possibility or even the probability of the Revenues of one of the Governments diminishing by the adoption of an interpretation can be no ground

(9) *Per* Gwyer, C.J., in 1939 F.C. 1 at page 10.

for discarding it especially where the language of the statute admits of no ambiguity or doubt.

(*x*) Where the invalid part of an Act is severable from the other parts and the two are not inextricably connected, only the former is invalid except where by following such a course the whole object of the Act would be frustrated. An Act can thus be partly *ultra vires* and partly *intra vires* where the subject beyond the legislative power of any legislature is perfectly distinct from that which is within that power.[10]

(10) Per *Sulaiman, J., in Shyamakant* v. *Rambhajan*, 1939 F.C. 74 at 83.

CHAPTER II.

The Government of India Act, 1935.

1. **Government of India Act Unique.**—The Government of India Act, 1935, for the first time in history after the advent of the British into India enacts a Federal constitution in place of the Unitary Government that prevailed therein. Under the Government of India Act, 1919, all authority was concentred at the centre and every Province was enjoined by a statutory obligation to obey the orders of the Governor-General in Council and made subject to his superintendence, direction and control by the addition of S. 45-A which provided for the classification of subjects in relation to the functions of the Government as Central and Provincial and for the devolution of authority and allocation of revenues to the Provinces. The Devolution Rules of 1920 thus came into existence and under S. 129-A (1) of the Act the power of the Indian or any local legislature to repeal or alter the same were taken away at least for practical and administrative purposes and the Provinces thus acquired a sort of quasi-independence of the centre even before the passing of the Government of India Act, 1935, though it was neither complete nor comprehensive. S. 84 (2) of the Government of India Act, 1919, however appears to be in conflict with S. 129-A but the same can be reconciled by construing the same to be confined to matters relating to practical and administrative arrangements and reading S. 84 (2) as establishing the theoretical right of the Indian Legislature

to legislate over the whole field.[1] The Federal constitution introduced under the Act of 1935 makes the legistive independence of the Provinces more complete. The Federation thus established is in several ways unique and unparallelled; it follows no one model, though its provisions are to a large extent based on the Canadian model and to some extent on that of the Commonwealth of Australia. Analogies drawn from the existing Federations and the judicial interpretation of the provisions of the respective Acts by which those Federations came into being, are therefore at best only useful guides in attempting to understand its language and are by no means conclusive or even authoritative. In its attempt to avoid a final assignment of residuary powers, the Government of India Act provides for a Federation, which is more self-contained and more detailed and elaborate in the specification of the powers of each body or unit created thereby, than obtains in the known Federal constitutions of the World. There are several other anomalies that a constitutional expert would easily detect in the framework of the Indian constitution. It is not the object of this work to deal with all the constitutional aspects arising from an examination of the Act with regard to its truly federal nature. To investigate the principles of interpretation by which the Act has to be construed, as also those which regulate the several Acts or laws passed under its authority or by the legislatures or bodies created by it, is the main end of this chapter. Some of these principles have alrcady been alluded to. A short review of the Act and the powers of the several authorities created under

(1) *United Provinces* v. *Governor-General in Council*, 1939 F.C. 58. *Vide* observations of Varadachariar, J., at page 72 and paras. 141 to 143 of the Statutory Commission's Report.

it are necessary for a proper interpretation of the several provisions of the Act.

2. **Summary of its provisions.**—The Act is divided into 14 parts. The first part is introductory, the second deals with the Federation of India, the third with the Governors' Provinces, the fourth with Chief Commissioners' Provinces, the fifth with Legislative powers, the sixth with the administrative relations between the Federation, Provinces and States, the seventh with Finance, Property, Contracts and Suits, the eighth with the Federal Railway Authority, the ninth with the Judicature, the tenth with the Services of the Crown in India and the eleventh with the Secretary of State and his advisers and his Department. The other parts are of a miscellaneous nature and deal with the saving of rights and obligations, transitional provisions and the Acts repealed and the period from which the provisions enacted come into effect.

3. **Act governed by English Interpretation Act.**—This Act being an Act of Parliament is governed by the English Interpretation Act, 1889,[2] and it has been so made applicable by an Order in Council dated 18—2—1937. Likewise does the English Act apply to the several Orders in Council passed by His Majesty under the provisions of this Act especially under S. 289 of the Act. The General Clauses Act, 1897, which is the Interpretation Statute for India has also been suitably modified by Order in Council dated 17—3—1937. S. 311 deals with interpretation under the Act. It defines certain expressions for the purposes of the Act, amends S. 18 of the Interpretation Act dealing with the definition of 'Colony' and excludes 'British Burma' along

(2) Appendix.

with 'British India' from the countries falling under the definition [sub-S. (4)]. Sub-S. (5) provides for adaptations and modifications of Acts of Parliament relating to India consequent on the passing of the Government of India Act, 1935, and the Government of Burma Act 1935. Sub-S. (6) makes a reference to any laws passed in India as including reference to Ordinances made by the Governor-General.

4. **No Preamble.**—Turning to the body of the Act we find that the Act itself contains no Preamble, though under S. 321 of the Act the Preamble to the Government of India Act, 1919, is retained. The said Preamble states that it was its object to gradually develop self-governing institutions with a view to the progressive realization of responsible Government in British India, which the Governor-General of the day interpreted in 1929 as contemplating the attainment of Dominion Status.[3] The refusal to insert Dominion Status as the goal of India in the Preamble to this Act and the retention of the inoperative Preamble of a repealed statute has been described by Dr. Keith, as a piece of 'legislative monstrosity'. The retention of the Preamble of the Act of 1919 was justified, however, on the ground that it was a record of the intention of Parliament, which had not changed and which was not intended to be changed. It should be stated, however that the Preamble has no operative or objective effect and the only purpose for which it could be used if at all,

(3) In answer to the recent Indian demand for a declaration of British War Aims, Sir Samuel Hoare in the House of Commons declared it to be the attainment by India of 'the Dominion Status of 1926' and Lord Zetland affirmed it in the House of Lords and stated that the Statute of Westminster had not conferred a different or superior Status than that described in the Balfour declaration contained in the report of the Imperial Conference of 1926.

viz., to throw light upon the operative part of the statute of 1919 is absent as the Act of 1919 itself has been repealed. Its only importance therefore lies in the fact that it is a notable statement of the genuine intention of the Parliament in 1919 not intended to be departed from under the Act of 1935 but proposed to be and adhered to even under that Act.

5. **Resumption and regrant by the Crown of its authority, etc.**—The Crown of England assumed direct sovereignty of the Indian Empire in 1858 and has since then exercised all the rights and prerogatives pertaining to such suzerainty. When the Government of India Act of 1919 was repealed and the Act of 1935 passed, what happened was virtually a resumption by the Crown of all rights, authority and jurisdiction in and over the territories of British India from those in whom they were vested before the repeal, and to regrant or redistribute them to the several units as laid down in the Act. The transition from the old constitution to the new is effected by the conferring of those rights, authority, etc., on the Governor-General, the Governor and other appropriate authorities, so far as British India is concerned, and on the Viceroy so far as the Indian States are concerned.

6. **Crown's Prerogative.**—All rights of the Crown including its prerogative inhere in the Crown except to the extent they are affected by statute expressly or by implication. The Crown is the ultimate owner of all property and the absolute owner of all waste land in British India;[4] the gold and silver mines are also vested in the Crown for the purpose of maintaining its power and enabling it to defend the state.[5] S. 172 of

(4) *Madura Devasthanam* v. *Alikhan Saheb*, 61 M.L.J. 285 at 292.
(5) *Mayor of Lyons* v. *E.I.Ry. Co.*, 1 M.I.A. 175 at 281.

the Act embodies the scheme of distribution of the Crown property between the Federation and the Provinces according to necessity, its future use and the constitutional functions to be performed by them.

7. **Crown single and entire—Its prerogatives in Colonies.** —It was held under the British North America Act that the formation of the Dominion of Canada did not sever the connection between the Provinces of the Dominion and the Crown and the prerogative of the Crown continued after the passing of that Act. The priority of Crown debts obtains in the Dominions as in the Mother Country and the Provincial Governors enjoy such part of the Prerogative as is delegated to them either expressly or by necessary implication. The Crown is one entity whether it acts on behalf of the Dominion or the Province and may sue in one capacity against the Crown acting in another capacity. The ancient prerogative of the Crown is inalienable as it is essential for its dignity and upkeep and unless there is anything stated to the contrary Acts of Limitation, or those dealing with forfeiture or penalties, duties and taxes or dues, rates and costs do not affect 'the Crown'.[6] In the case of fines, however, it is only those that are unappropriated that belong to the Crown. Where the legislature directs a special application of fines the prerogative right to fines is abrogated.[7] It has also been held that the Crown enjoys the prerogative of granting Letters Patent, of choosing its own Courts and of admitting appeals, from the Colonies. The only classes of statutes which bind the Crown even

(6) *See* Craies Statute Law, page 359 and at pages to 369; also *Attorney-General* v. *Emerson*, (1891) A.C. 649.

(7) *Toronto City Corporation* v. *The King*, (1932) A.C. 98.

in the absence of specific mention have been referred to in the *Magdalene College case*,[8] and have already been adverted to in an earlier part of this work.

7-A. And in India.—The Federation of India and the Provinces occupy a similar position to that of the Dominion and the Provinces in Canada in their relation to the Crown and both derive their powers direct from the Crown and each sues by itself against the other or against others. The Crown is one and indivisible in the British Empire and the same is in no way falsified or contradicted by its assuming different aspects or by the collision of rights and interests between the two. As Viscount Dunedin pointed out in In re *Silver Brothers*,[9] a distinction is made between the property and revenue of the Federation and the property and revenue of its Units by legislation assented to by the Crown, according to which there must be deemed to exist two 'statutory purses' with claims and liabilities against each other. Again the Crown acting through the Federation may be bound by legislation passed by the Crown acting through the Provinces and so on and the same in no way detracts from its essential oneness. As an example of the statutory mention of the prerogative may be mentioned S. 294 (7) which says that nothing in the Act shall limit the right of His Majesty to determine the Courts by which the British subjects and subjects of foreign countries shall be tried in respect of offences committed in Indian States and S. 295 (2) which refers to the right of pardon, reprieve, respite or remission of punishment, on the part of the Crown.[10] S. 112

(8) (1616) 11 Co. Rep. 74 (*b*).
(9) (1932) A.C. 514.
(10) *See* in this connection *A.-G. for Canada* v. *A.-G. for Ontario*, 23 Sup.C.R. 458 and, *Nadan* v. *King*, 1926 A.C. 482.

of the Civil Procedure Code refers to the 'full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council' and as their Lordships of the Privy Council pointed out in *Bhaya Mahomed Azim Khan* v. *Raja Sardat Ali Khan*,[11] the discretion which S. 112 affirms and maintains applies to the rejecting as well as the receiving of the appeals and the prerogative is neither in part nor as a whole concluded for either purpose by S. 109, C.P.C., though their Lordships would certainly be more slow to impair than to extend provisions of this character.

8. **Paramountcy of the Crown over Indian States.**—The relationship between the Crown and the Indian States is often described by the term paramountcy. The distinction between sovereignty and paramountcy has been described by a constitutional historian thus: 'Sovereignty may be spoken of as a power which is legislative in form, direct in the method in which it is exercised and immediate in the effects it produces while 'Paramountcy' is political in form indirect in the way it is exercised and ultimate in its effects'.[12] The relationship arises by virtue of treaties, engagements entered into with the States and political usage,[13] whereby the Crown has undertaken the responsibility for the external defence and by a long course of events has assumed suzerainty in several matters relating to the states

(11) (1939) 2 M.L.J. 181 at 194.

(12) Federalism in Government by M.V. Rangiah, Andhra University Publications, pp. 16 to 19.

(13) The Government of India asserted in 1887 that 'in the life of states as well as of individuals documentary titles may be set aside by overt acts, and a uniform and long continued practice acquiesced in by the party against whom it tells, whether that party be the British Government or the Native State must be held to exhibit the relation which in fact exists between them'. *See* Butler Committee Report p. 141.

allowing them full powers in the internal administration. It has taken up a general responsibility for the soundness of the administration in the States and has the power to safeguard the interests of the States as well as of itself in such subjects as Railways, Telegraph and other Imperial services.

8-A. Constitutional position of Native States.—The constitutional position of the Native States may be said to be one of protection under the British Crown. They enjoy varying degrees of internal sovereignty (though they are by no means independent) but have surrendered their external sovereignty to the British Crown. They have no individual place in International life and possess none of its attributes and principles of International law do not apply in regard to their relations with the Government of India. They have sometimes been described as sovereign political communities for purposes of private International jurisprudence.[14] The British Crown is the supreme authority in matters connected with the defence of the Native States and in several other matters it exercises a sort of 'residuary jurisdiction' over them. In the Cantonments, Civil Stations in the territories of Indian States, in regard to Railways, the premises occupied by Residents or Political Agents and in regard to British subjects in the States, it exercises also a certain amount of extra-territorial jurisdiction, laws under the Foreign Jurisdiction Act of 1890 being promulgated in regard to the first two areas. Thus as the Butler Committee put it, the paramountcy of the Crown in regard to the Native States is paramount and absolute. It transcends sometimes the principles of comity, agreement and usage which

(14) *See* remarks of Lord Finlay in *Duff Development Co., Ltd.* v. *Government of Kelantan and another,* (1924) A.C. 797 at 814.

normally govern the relation of the States with it and denies them redress of a recourse to War, the ultimate resort of an aggrieved state under International law. In practice the Paramount Power has exercised the right of creating states, enlarging or diminishing their extent and of abolishing them according to its will and pleasure.[15]

8(b). **The Native States and the Crown.**—Under the Government of India Act the normal relation of the Native States outside the Instrument of Accession, if any, is with the Crown and not with the Government of India. Ss. 2 and 3 of the Act accordingly separate the office of the Governor-General and of His Majesty's Representative for the exercise of the functions of the Crown in relation to the Indian States. S. 285 of the Act expressly preserves the relations of the Native States with the Paramount Power separate from its relations with the Federal Government and specifies that subject to the provisions of the Instrument of Accession of a State nothing in the Act affects the rights and obligations of the Crown in relation to any Indian States. The greater part of the field of Paramountcy is thus untouched by the Act in regard to the Federating States and the entire field in regard to the non-federating states. The authority of the Federation over the Indian States is derived from the Crown in which are vested the powers and jurisdictions of the states in the first instance and which are placed by the Crown at the disposal of the Federation for exercise over the States and their Rulers who have so surrendered the same. The Princes pressed before the States Enquiry Committee that their treaties were made with

(15) *Vide* Indian States in the Federation by N. D. Varadachariar, Oxford University Press, 1936, pages 51 to 58.

the Crown of England and not the Government of India and S. 180 of the Government of India Act dealing with the effect of contracts in connection with the Indian States accepts and gives effect to that contention.

8(c). Instrument of Accession.—The Instrument of Accession, the document by which the state accedes to the Federation is the primary document by which the relations between the Federation and the Indian States are governed. The accession becomes complete on the acceptance thereof by His Majesty [S. 6 (1)]. It enables the King, Governor-General, Federal Legislature, Federal Court and any other Federal authority to exercise the functions vested in them by the Government of India Act but such exercise is strictly subject to the terms of the Instrument of Accession and should be only for the purposes of the Federation. [S. 6 (1) (*a*)]. It specifies the matters which the Ruler accepts as matters with respect to which the Federal Legislature may make laws for his State and the executive authority of the Federation may exercise such authority. The functions in the Instrument can be extended only by a supplementary Instrument which has to be accepted by His Majesty to become operative. The validity of an Instrument of Accession, once it is accepted by His Majesty cannot be questioned. The provisions mentioned in the second schedule to the Act which relate mainly to British India may be amended by Parliament but they have to be accepted by the Ruler in a supplementary Instrument to extend the authority of His Majesty or the Federal authority in regard to those provisions. The right of the Federal Legislature to legislate in regard to the States extends only to matters conceded in the Instrument of Accession and no further, though in regard to the former its right is

exclusive (S. 101). In all other matters the States enjoy complete authority to legislate for their own subjects and the Federated state is juristically a foreign country *vis-a-vis* the Federation in regard to such matters and no obligation is cast on the State to accept any Federal legislation passed on such an unaccepted subject. The Federating States have the concurrent right to legislate on Federal subjects also and such laws continue in force till a Federal law is passed which is repugnant to the same and even then the state Law would be void only to the extent of the repugnancy and no further [S. 107 (3)]. Again S. 104 which vests the residual powers of legislation in the Governor-General is not applicable to the States for all subjects not included in the Instrument of Accession continue to be vested in the State and are not affected by the said provision; similarly the extra-territorial effect of the Federal Laws cannot in the Federated states be extended to matters outside the Instrument of Accession and state Courts cannot be compelled to enforce them over British subjects while in state territory except as matters of private International law.[16]

9. **Legislative Powers.**—Part V of the Government of India Act deals with legislative powers under the Act. The Federal Legislature is empowered to make laws for the whole of India or for any Federated State and a Provincial Legislature for any Province or part thereof. [Section 99, Sub-section (1)]. Sub-section (2) confers express powers of extra-territorial legislation on the Federal Legislature in regard to (*a*) British subjects and servants of the Crown in any part

(16) Indian States in the New Regime by Maharaj Kumar Raghubir-sing, pp. 311 to 333.

of India, (*b*) British subjects domiciled in India wherever they may be, (*c*) Persons on ships or aircraft registered in British India or any Federated State, (*d*) subjects of a Federated State wherever they may be, in regard to matters included in the Instrument of Accession of that State on which Federal Legislature is competent to Legislate, (*e*) members of or persons attached to any naval, military or air force raised in British India so far as a law relating to its discipline is concerned. These powers are to be exercised without prejudice to the generality of powers conferred under Sub-section (1). The section thus sets out the territorial and extra-territorial limits of the legislation by the Federal Legislature. The Provincial Legislature has no powers of extra-territorial legislation. The tribal areas referred to in Section 8 (1) (*c*) of the Act subject to the executive authority of the Federation and areas governed by the Foreign Jurisdiction Act are excluded from the legislative ambit of the Federal Legislature. The powers of the legislature so long as it is acting within the ambit allotted to it is as supreme as in a fully sovereign state.[17] When acting with the limits set to it, it is neither an agent nor delegate of the Imperial Parliament but has plenary powers as large and extensive as those of Parliament.[18] The Provincial Legislature is likewise neither a delegate of the Imperial Parliament nor of the Federal Legislature. The same position was clarified in two decisions passed under the British North America Act. In *the Liquidators of the Maritime Bank of Canada* v. *The Receiver-General of*

(17) *Croft* v. *Dumphy*, 1933 A.C. 156.
(18) *Queen* v. *Burah*, 3 A.C. 889.

New Brunswick,[19] Lord Watson explained that the object of the British North America Act 1867 was neither to weld the provinces into one nor to subordinate provincial governments to a Central authority but to create 'a Federal Government in which they should all be represented entrusted with the exclusive administration of affairs in which they had a common interest each province retaining its independence and autonomy'. Again in *Croft* v. *Dumphy*,[20] already cited, the question that arose for consideration was whether the Dominion Parliament of Canada was competent to enact customs laws so as to be operative for a distance of $11\frac{1}{2}$ miles from the coast of Canada and their Lordships of the Privy Council in holding it in the affirmative pointed out that when once a particular topic of legislation was found to come under one of the specified subjects enumerated in S. 91 of the British North America Act or one that could be brought under the head of 'peace, order and good government of Canada' there was no reason whatever for restricting the permitted scope of such legislation by any consideration other than is applicable to the legislation of a fully sovereign state.

10. The Seaward Limit.—The Seaward limit of British India and the Provinces has been left vague under the Act as the term 'territorial waters' used in Item 23 of List 1 of Schedule VII has not been defined. The actual extent of the Seaward limit and whether a state has a proprietory right in the soil are matters which are still obscure and not free from doubt.[21] In *Croft* v. *Dumphy*,[22] the Privy Council

(19) 1892 A.C. 437.

(20) 1933 A.C. 156.

(21) *A.-G. for British Columbia* v. *A.-G. for Canada*, 1914 A.C.

observed that states can legislate effectively only for their own territories and the extent to which a state can be deemed to extend seawards was a question of International law on which their Lordships were not prepared to make any pronouncement. 'Whatever be the limits in the International sense', their Lordships held, 'it has long been recognized that for certain purposes notably those of police, revenue, public health and fisheries a state may enact laws affecting the seas surrounding the Coast to a distance seaward which exceeds the limit of its ordinary territory'. The latest pronouncement on the matter is that of Lord Sankey

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153; See also *Chelikani Ramarao* v. *Secretary of State,* 39 M. 617. In *Lord Advocate* v. *Clyde Navigation Trustees,* (1891) 19 Rettie 174, Lord Kyllachy held that the right of tre Crown over the three mile strip of territory lying along and washing its coast was proprietory and of the same character as its right in the foreshore in tidal and navigable rivers. It is not a mere protective right but one capable of forming the subject matter of trespass and of being vindicated like any other property. Again in *Lord Advocate* v. *Wennyss,* (1900) A.C. 48 the right of the Crown to 'the solum underneath the waters of the Ocean whether within the narrow seas or from the coast outward to the three mile limit and also the minerals beneath it' was upheld. In *Chelikani Rama Rao* v. *Secretary of State,* 39 M. 617 (P.C.), their Lordships of the Privy Council relying upon the above decisions upheld the right of the Government as against the Zamindars to the ownership of the two islands formed in the bed of the sea near the mouth of the River Godavari situated within 3 miles of the main land distinguishing the Franconia case, *The Queen* v. *Keyn,* (1876) 2 Ex.D. 63, (decided prior to the Territorial Waters Jurisdiction Act, 41 & 42 Vic. 73) which appeared to hold the contrary on the ground that it was applicable to the restrictions on the jurisdiction of the Admiralty and had no reference to the proprietary right of the Crown. Lord Shaw, expressed himself strongly against the suggestion that the territory of the Crown ceases at low water mark. His Lordship observed, "there is nothing to recommend a local jurisdiction over a space of water lying above a *res nullius*. As to practical results, the confusion that might be produced by having islands emergent within the mile limit to be seized by the first comer is clear beyond controversy. He might be a foreign citizen, he would of course hoist the flag of his own nation, and that nation might proceed to fortify the emergent lands; in short it is not difficult to figure the anomalies and difficulties which the abandonment of the plain ground taken by Lord Watson would involve to this and other nations."

(22) 1933 A.C. 156.

in *British Coal Corporation* v. *King*,[23] wherein it was laid down that the powers of extra territorial legislation of Colonies were bound by limitations, though the precise extent was obscure and gave rise to disputes and conflict of legal opinion amongst Courts as well as jurists. So far as the Colonies were concerned the matter was set at rest by S. 2 of the statute of Westminster, 1931 which specifically empowered such extra territorial legislation[24]; but the same does not apply to India as it is neither a planted nor conquered colony. Neither the Federal Legislature nor the Provincial Legislature has any power to tax non-resident foreigners in regard to property which is not situated within its area. The Federal Legislature enjoys a power under the Act (Item 23 of the Federal list) to pass extra-territorial fishery legislation as the same is an undoubted right enjoyed by all countries with a sea coast. It has already been pointed out that the Federal Legislature can legislate so as to affect the prerogative of the Crown. Bhasyam Iyengar, J., upheld such a right

(23) 1935 A.C. 500.

(24) The Statute of Westminister 1931 enacts as the established Constitutional position of the Dominions in relation to Great British that no law thereafter made by the Parliament of the United Kingdom shall extend to any of the Dominions as part of the law of the Dominions, otherwise than at the request and with the consent of the Dominion. The Preamble further states that any change in the law of succession to the Crown requires the concurrence of the Dominion Parliament. S. 2 of the Act removes the disability on the legislative competence of the Dominions to pass legislation repugnant to the Laws of England arising under the Colonial Laws Validity Art 1865 and under the Common Law of England and S. 3 declares and enacts the absolute power of a Dominion Parliament to pass laws having extra-territorial operation. Before this statute the Dominion Paliament could not pass a law prohibiting a right of appeal to the Privy Council vide *Nadan* v. *King*, (1926) A.C. 482 but after its enactment it was held to be perfectly competent for the Dominion Legislature to pass such a law: vide *British Coal Corporation* v. *King*, (1935) A.C. 500 in regard to Canada and *Moore* v. *A. G. for the Irish Free State*, 1935 A.C. 484 so far as the Irish Free State is concerned.

in Bell's case, and the later decision in *British Coal Corporation* v. *King*,[25] lends great support, to that view. The specific mention of some prerogatives, such as the right of the Privy Council to grant special leave having alone been excluded (*vide* S. 110 of the Act) other prerogatives can be interfered with by express legislation.

11. Distribution of Powers between the Federal and Provincial Legislature.—S. 100 and the following few sections are perhaps the most important sections in the Act which call for constant interpretation from Courts especially from the Federal Court whose functions and jurisdiction are dealt with in Part IX dealing with Judicature. They deal with the distribution of powers between the Federal Legislature and the Provincial Legislature. The method adopted is a mixture of both the Canadian and Australian models. The Canadian constitution gives greater prominence to the central authority, that of the Dominion, while the Australian constitution gives greater powers to the component states forming the Commonwealth.[1]

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(25) 1935 A.C. 500.

(1) The Canadian Constitution contemplates a four-fold scheme of division, (*vide* Ss. 91, 92 of the British North America Act) the subjects included being (*i*) Education (*ii*) Agriculture and immigration (*iii*) subjects assigned exclusively to the Dominion and (*iv*) subjects assigned exclusively to the Provinces. The Dominion is given a general power to legislate for federal interests falling outside the scope of the exclusive powers granted to the provinces under the fourth head. The Dominion is also given exclusive power over 29 enumerated subjects 'notwithstanding anything in the Act'. The enumeration is not in any way to affect the general power granted to the Dominions over subjects other than those exclusively assigned to the provinces. The 29 subjects shall be deemed not to fall within the ambit of the exclusively provincial sphere. Likewise are 15 enumerated subjects assigned to the Provinces but the same by no means exhausts all subjects assigned to the Provincial Legislature which enjoys a general power to legislate over subjects of a purely private or local nature. Though the Dominion Legislature is given a wide power to 'make laws for the peace, order and good govern-

While the powers of the centre and the Federal units are described minutely in the Indian Federal Constitution the residuary authority is not vested in the Federal Legislature but there is a long concurrent list containing subjects, the legislation in regard to which is provided for separately. The method of avoiding repugnancy in the concurrent list is provided for as in the Australian constitution without allocating the residuary authority to the Provinces. The Act attempts by taking recourse to an exhaustive description of the items allotted to each of the legislatures, to leave practically no residue. The Federal Legislature alone has power to make laws with respect to the matters contained in the Federal Legislative List (List I in the seventh schedule to the Act); both the Federal and Provincial Legislatures have power to legislate regarding matters enumerated in the Third list in the Schedule, called the concurrent legislative list and subject to the above, the Provincial Legislature alone has power to legislate in regard to the subjects mentioned in List II called the Provincial Legislative list (S. 100). The Federal Legislature has also power to legislate on subjects mentioned in the Provincial Legislative list in regard to territories other

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ment of Canada', it is not a complete grant of the residuum of 'undefined and unenumerated' powers in Canada as the Provinces are likewise granted a residuum of undefined power in matters of local or private provincial nature. The residual power of the one is thus curtailed by the residual power of the other, the ultimate residue of power being in the people as in the United States of America. A wide demarcation is thus made of the interests of Canada and of the Provinces. Whether any particular subject falls within one sphere or the other is a question of fact to be decided on the facts of each case while not infrequently it may happen that a subject emanating as a provincial subject such as a hydroelectric scheme may develop into a national interest calling for exclusive legislative interference from the Dominion Parliament. For a further discussion of the subject *vide* 'The Constitution, of Canada' by W.P.M. Kennedy, Oxford University Press.

than a Province or a part thereof. The Federal Legislature can legislate for a Federated State only in regard to matters included in the Instrument of Accession pertaining to that state and subject to the limitations contained in that instrument. In case the Governor-General considers that an emergency has arisen and proclaims it to have so arisen, and the security of India is threatened on account of an apprehended war or internal disturbance the Federal Legislature is empowered to legislate on Provincial subjects also.[2] Such legislation requires the previous sanction of the Governor-General in his discretion. Where there is a conflict or repugnance between a Provincial Law and a Federal Law (passed in cases of emergency before or after the passing of the Provincial Law) the Provincial Law shall be void to the extent of the repugnancy and during the tenure of the Federal Law passed under emergent circumstances. The Proclamation of Emergency should be communicated to the Secretary of State and laid before both Houses of Parliament and may be revoked and ceases to operate after the expiry of 6 months except where the Parliament resolves to continue it prior to its lapse. All such emergent measures shall automatically cease after 6 months, after the cessation of the Proclamation (S. 102). The Federal Legislature has also power to legislate for two or more provinces by the consent of the latter (S. 103). The residual powers of legislation are dealt with in S. 104 which

In the case of the Australian Commonwealth, however, the Australian Commonwealth Constitution Act, 1900, enumerates the powers of the Federal (Commonwealth) Legislature and the residue of powers is left to the States (*vide* Annotated Constitution of the Australian Commonwealth: Quick and Garran, Chapter V.)

(2) *Cf.* The Defence of India Act 1939 (Act XXXV of 1939) which received the G.G's assent on 29—9—1939.

authorizes the Governor-General by notification to empower either the Federal Legislature or the Provincial Legislature to legislate in regard to any 'matter not enumerated in any of the lists in the seventh schedule' including a law imposing a tax not mentioned therein and the executive authority of the Federation or of the Province shall administer the law so passed or in such a manner as the Governor-General may direct. S. 105 provides for the application of the provisions of the Naval Discipline Act to the India Naval Forces under circumstances indicated therein. The Federal Legislature has to obtain the consent of the Governor or of the Federated State before legislating in order to give effect to international agreements. S. 107 lays down the rule to be followed in case of a repugnancy between Federal Laws on the one hand, and the Provincial or State Laws on the other. In cases where there is a conflict between a Provincial Law and a Federal Law both passed in regard to a subject in the concurrent list, the Federal Law passed before or after the Provincial Law or the existing Indian Law on that subject shall prevail and the Provincial Law shall be void to the extent of the repugnancy [sub-S. (1)]. Sub-S. (2) deals with a case where the Provincial Legislature may supersede a Federal Law on a matter in the concurrent list and how the Federal Legislature may again supersede the Provincial Legislation on such a matter. If the Provincial Law has been reserved for the consideration of the Governor-General or for the signification of his Majesty's pleasure and has received such assent the Provincial Law shall prevail but the Federal Legislature may enact further legislation in regard to such law after having secured the previous sanction of the Governor-General in his discretion. In case of a re-

pugnancy between a Federal Law extending to a state and any law of that state, the Federal Law passed before or after the law of the state, shall prevail and the law of the state shall be void to the extent of that repugnancy. In cases of overlapping between a subject-matter falling within the Federal and Provincial lists, the subject will be deemed to be exclusively Federal so far as the overlapping is concerned; the same is the case where there is an overlapping between the Federal and the concurrent lists. Where there is an overlapping between the concurrent list and Provincial list the concurrent list shall prevail. The Provincial list is fully operative therefore only to the extent it does not come into conflict with the Federal or concurrent lists.

12. Ss. 292 to 300 of the Act provide for certain legal matters affecting the operation of the Act and the enunciation of some fundamental rights governing the application of the Act. S. 292 provides that the law existing prior to the commencement of part III of the Act shall continue in force in British India subject to the other provisions of the Act, till altered, amended or repealed by a competent legislature or authority and S. 293 for the adaptation of existing Indian Laws to bring them in conformity with the provisions of the Act. S. 294 defines the extent to which powers hitherto exercised in the States by the Crown under the Foreign Jurisdiction Act continue or are replaced by powers exercised on behalf of the Federation. S. 295 deals in general with the powers of pardon. The Governor-General in his discretion is empowered to suspend, remit or commute sentences of death in cases in which the Governor-General in Council exercised such powers before the commencement of part III of the Act but no authority outside a Province shall have such

power. The right of His Majesty (or of the Governor-General by virtue of delegation) to grant pardons, reprieves, respites or remissions of punishment is in no way affected by the Act. S. 296 enables the Governor to establish tribunals dealing with revenue matters and provides for payment of salaries and allowances to the members of the tribunal. S. 297 deals with prohibition of restrictions on internal trade of the country. The entries in the Provincial Legislative list relating to trade and commerce or to the production, supply and distribution of commodities do not entitle the Provincial Legislature or the Government to pass laws or take executive action prohibiting or restricting the entry into or export from the Province of goods of any class or empower it to impose any tax, cess, toll or due which is discriminatory between goods of one locality and those of another and any such law passed is declared void. The object of the provision is to keep up the economic unity of British India and to preserve freedom of Inter-Provincial trade. Legislation under similar heads has created a conflict of opinion as regards its validity in the Colonies[3] and the better view would appear to be that while real restrictions on interstate Commerce are discouraged, preventive measures to ward off famine or disease are supported as being *intra vires*. S. 298 contains a partial declaration of Fundamental rights mostly drawn from Queen Victoria's Proclamation to the effect that race, religion, birth, descent or colour shall not render ineligible any one to hold any office under the Crown in India. Exception is made to pro-

(3). *New South Wales* v. *Commonwealth*, 20 Com.L.R. 54; *James* v. *Crown*, 43 Com.L.R. 386; *James* v. *Commonwealth of Australia*, 1936 A.C. 578.

vide for laws like the Punjab and Bundelkhand Land Alienation Acts, laws of pre-emption, etc. S. 299 is perhaps one of the most important provisions as it deals with the right to expropriation under the Act. It is first laid down that none shall be deprived of his property in British India except by authority of law. Neither the Federal nor the Provincial Legislature can pass laws enabling the compulsory acquisition of any land, or any commercial or industrial undertaking for public purposes without a provision for payment of compensation therefor or fixing principles on the basis of which it ought to be paid. The previous sanction of the Governor-General in his discretion or of the Governor in his discretion is made essential for the introduction of any legislation for the transference of any land or any rights therein to public ownership or the modification of rights therein including rights or privileges in respect of land revenue, so that the said authorities may consider the awarding of compensation to those whose interests are adversely affected or likely to be affected by such legislation such as Zemindars, Jagirdars, Inamdars and Talukdars, etc. The Instrument of Instructions to the Governor accordingly directs the Governor to reserve and to refuse to assent to a Bill altering the character of the Permanent Settlement. The alteration to come within the language of the instruction should be a substantial one and not merely a legislation which only imposes greater liabilities on the Zamindar or Inamdar than prior to the Act. S. 300 protects interference on the part of the executive authority of the Federation or a Province with grants, or confirmation of titles, rights or privileges in respect of land or land revenue prior to 1870

and the pensions in force except as provided in the section.

13. Doctrine of Immunity not applicable to India.— The general principles governing the Interpretation of Constitution Acts, specially Federation Acts, have already been enumerated in an earlier chapter. It has only to be stated that those rules and decisions of the Canadian and Australian Courts may be referred to as useful guides where the language of the Act is not clear or is ambiguous, if they are not inconsistent with the general scheme of the Act and are not opposed to its language and spirit. One thing alone may be stated that the rule of implied prohibition or the Doctrine of Immunity of Instrumentalities is not applicable in the interpretation of the Indian Constitution. The doctrine was originally formulated by Marshall, C. J., of the United States of America who observed in *Mc. Cullock* v. *Maryland*,[4] that the power to tax implied the power to destroy and the power to destroy might defeat and render useless the power to create and there was therefore a plain repugnance in conferring power on one Government to control the constitutional measures of another. The power of each Government was thus to be restricted so as not to impair the independence of the other and an implied prohibition against the states taxing the agencies by which the Federal Government carried on its functions and *vice versa* was to be assumed. The doctrine was restricted in later years strictly to governmental functions and was held inapplicable to trading operations even in the United States and Australia and was definitely given up *in toto* in Australia in 1920 in *Amal-*

(4) 4 Wheaton 316.

gamated Society of Engineers v. *Adelaide Steamship Co., Ltd.*,[5] while in the case of Canada the Privy Council had always refused to read any such rule or doctrine into the construction of the British North America Act. In the *Bank of Toronto* v. *Lambe*, already referred to, Lord Hobhouse rejected the application of the doctrine to British North America Act and the same applies to the India Act. Lord Hobhouse who delivered the judgment of the Privy Council after referring to the above doctrine and its application to the United States of America, stated his grounds for refusing to apply the doctrine to Canada. "It is quite possible", said his Lordship, "to argue from the one case to the other. Their Lordships have to construe the express words of an Act of Parliament which makes an elaborate distribution of the whole field of legislative authority between two legislative bodies and at the same time provides for the federated provinces a carefully balanced constitution under which no one of the party can pass laws for itself except under the control of the Governor-General. And the question they have to answer is whether the one body or the other has power to make a given law. If they find on the due construction of the Act a legislative power falls within S. 92, it would be quite wrong of them to deny its existence because by some possibility it may be abused, or may limit the range which otherwise would be open to the Dominion Parliament". In a subsequent case, *A. G. of Alberta* v. *A. G. of Canada*,[6] their Lordships had occasion to explain the above case as relating mainly to two contentions advanced before their Lordships, *viz.*, (1) that

(5) (1920) 28 C.L.R. 129.

(6) 1939 P.C. 43.

the taxation therein was not taxation within the Province and (*ii*) and that the tax was not a direct tax and that it was never suggested that the Quebec Act imposing the tax was in any way calculated to encroach upon matters exclusively assigned to the Dominion. In the later Privy Council case above named however, the Provinces aimed mainly at Banks including Savings Banks which under S. 91 of the Canadian Act were within the exclusive legislative authority of the Dominion and the Alberta legislation was accordingly held to be *ultra vires*. While thus the legislatures can each act within their own sphere without being subjected to any limitations that may be prescribed by any doctrine such as the Doctrine of Implied Prohibition, it is not open to the Provincial Legislature to impair or, 'sterilize' the status and essential capacities of a company incorporated under a statute passed by a Dominion Legislature.[7]

13-a. **Federal Court.**—The Federal Court is constituted under the Act to determine disputes arising in the construction or interpretation of the Act. It has original, appellate, revisional and miscellaneous jurisdiction. S. 204 confers exclusive original jurisdiction in any dispute between the Federation, the Provinces, and any of the Federated States, on questions of fact or law on which the existence or extent of a legal right under the Act depends, subject to certain limitations in the case of disputes to which a state is a party. A legal right is one recognised by law and capable of being enforced by the state. Legal recognition and legal protection are its attributes and enforceability in a Court of law is not a necessary ingredient of its definition. Thus the mere

(7) *John Decre Plow Co.* v. *Wharton*, (1921) 2 A.C. 91; *Great West Saddlery Co.* v. *The King*, (1915) A.C. 330; *A. G. for Manitoba* v. *A. G. for Canada*, (1929) A.C. 260.

fact that under the Government of India Act 1919 the Provincial Governments were subordinate to the Central Government and could only have made a representation to the Governor-General in Council or the Secretary of State in regard to the infraction of the Devolution Rules framed under that Act was insufficient to deny the Provincial Governments the possession of 'a legal right' as against the Central Government within the meaning of S. 204 of the constitution Act. [*Vide* observations of Sulaiman, J., in 1939 F.C. 58 at 66.] An action in regard to a legal right might be barred but the right itself may not be extinguished and a person who had a right could avail himself of a remedy given by a statute enacted subsequent to the accrual of the right.[8] Again what exactly is the interest that a party to a dispute under S. 204 should have to enable the Federal Court to assume jurisdiction may not be capable of definition but in most cases it would be easily ascertainable. Where the United Provinces denied the validity of S. 106 of the Cantonments Act (1924) and the Governor-General affirmed it, the latter was held to have sufficient interest within the meaning of the section notwithstanding that the Province could have sued the Cantonment Board direct and the dispute was accordingly held to be justiciable by the Federal Court. [Vide *United Provinces* v. *Governor-General*.[9]] In its original jurisdiction the Federal Court can only pass a declaratory judgment. The fact that the Judgment that can be passed is only declaratory does not make it the less binding on the parties or the local bodies subordinate to it. As the learned Chief Justice put it

(8) *The Alexander*, (1841) 1 W.Rob. 288=(1841) 166 E.R. 580.

(9) *United Provinces* v. *Governor-General*, (1939) F.C. 58=(1939) II M.L.J. Sup. 1.

in the above case (1939 F.C. 58) it would be greatly surprising if a subordinate body disregarded a pronouncement of a Federal Court and much more so if the Central Government did not take the necessary steps to make such subordinate bodies obey the law as laid down by that Court. [*See* the observations of Gwyer, C.J., in 1939 F.C. 58 at 65.[10]] Section 205 lays down the appellate powers of the Federation in appeals from High Courts in the Provinces and S. 207 in appeals from High Court in Federated States and S. 206 deals with power of the Federal Legislature to enlarge its appellate jurisdiction. An appeal lies to the Federal Court from every judgment decree or final order of a High Court. In deciding what is a final order one should look to the substance of the matter and not merely its form. A Federal Court can in the exercise of its appellate powers not only allow or dismiss an appeal presented before it but also remit a case to the High Court with a declaration directing that in place of the judgment or decree of the High Court may be substituted, its own judgment, decree or order and can take notice of subsequent events or the state of law obtaining at the time of the hearing of the appeal by the Federal Court including any legislation lawfully passed subsequent to the order of the High Court appealed against, thus possessing the same powers that are enjoyed by the Courts subordinate to it under S. 107 and Or. 41, R. 33 of the Civil Procedure Code.[11] A certificate of the High Court that the case involves a substantial question of law as to the interpretation of the Act or any order in Council made thereunder

(10) See also *Robert Fischer* v. *The Secretary of State for India*, (1898) 22 M. 270 at 280 (P.C.).

(11) *Shyama Kant* v. *Ram Bhajan*, (1939) F.C. 74 at 77.

under S. 205 (1) of the Act is a condition precedent to the exercise of jurisdiction by the Federal Court, and Sub-section (2) comes into operation only when such a certificate is granted. The Federal Court has no inherent jurisdiction to grant special leave to appeal nor can it extend its appellate or revisional jurisdiction over other Courts by exercise of such inherent power.[12] When once the certificate is granted, the matter is at large and the appellant is not restricted in arguing the appeal to the constitutional issue alone but he can put forward any ground on which he could have appealed to the Privy Council without special leave if no such certificate had been granted and on any other ground with the leave of the Federal Court. The Federal Court however in the absence of special reasons would not be justified in going into the whole evidence in a case.[12a] In case an appeal is filed after obtaining a certificate under S. 205 no direct appeal lies to His Majesty in Council with or without special leave. A litigant however, who apart from the provisions of S. 205 has a right of appeal to the Privy Council is not deprived of his right by the refusal of the High Court to grant the Certificate.[13] The Federal Legislature may provide for appeals from the High Court to the Federal Court without such a certificate in civil cases whose subject-matter is not less than Rs. 50,000 or such other sum not less than Rs. 15,000 in value as may be provided by it and in civil cases where the Federal Court gives special leave to appeal. The legislation, however, can be passed only after the previous

(12) *Lakhpatram* v. *Behari Lal Mislr and others,* 1939 F.C. 42.

(12-a) *Per* Varadachariar, J. in *Hori Ram Singh* v. *Emperor,* 1939 F.C. 43 (A.I.R.) at p. 55=(1939) II M.L.J. Sup. 23.

(13) *Pasupathi Bharati* v. *Secretary of State and another,* (1938) A.I.R. F.C. 1=1939 F.L.J. 1.

sanction of the Governor-General is obtained and appeals to the Privy Council with or without special leave may be abolished in whole or in part after such legislation comes to be passed. (S. 206). The General language employed in conferring appellate powers on the Federal Court leads to the reasonable inference that it has Criminal appellate jurisdiction as well. The word 'judgment' in the words 'judgment, decree or final order' in S. 205 is comprehensive enough to include the judgment pronounced in a criminal case. A reference to S. 366 and other like sections in the Criminal Procedure Code, Cl. 41 of the Letters Patent of the Chartered High Courts, as well as the language of S. 210 (2) and the contrast in language between the wording of S. 205 and S. 206 which refers to 'Civil' cases lends strength to that view. *Vide* observations of *Sir Varadachariar, J. in Hori Ram Sing* v. *Emperor*.[14] The appeal arose out of a remand order of the High Court of Lahore sending the criminal appeal back to the Sessions Judge who originally tried it and Justice Sir Sulaiman expressed the opinion that the appeal was incompetent as the remand order of the High Court could not be regarded as a final order within the meaning of S. 205 (1) of the Government of India Act, 1935. The learned Chief Justice Sir Maurice Gwyer, however, concurred with the view expressed by Sir Varadachariar, J. holding that to hold otherwise would be to place a narrow interpretation on the language of that section and it would be 'surprising' to deny jurisdiction in appeals from 'Criminal Courts' where 'many of the greatest constitutional questions of the past have been determined'. The advisory jurisdiction of the Federal Court comes into

(14) 1939 F.C. 43 at 54 (A.I.R.).

play whenever the Governor-General refers to it a question of law of public importance which has arisen or is likely to arise (S. 213). Where a special reference relates to an Act of the Provincial Legislature and the Advocate-General of India chellenges its validity, the onus is upon him in the first instance to state the facts and arguments and authorities pointing out the *ultra vires* character of the Act or any of its provisions impugned and it would then be for the Advocate-General for the Province to put forward his case on behalf of the Province by stating any further facts that may be necessary and meeting the argument of the Advocate-General for India. The reverse procedure has to be adopted if the Provinces challenge the validity of an Act of the Central or the Federal Legislature.[15]. In a case where an appellant challenges a Provincial Law as being repugnant to an existing Indian Law, the onus of showing the repugnancy and its extent lies on the party attacking its validity. The presumption is in favour of the validity of a legislation and an attempt should always be made by the interpreter to reconcile the conflict if possible and to examine whether the two pieces of legislation in apparent conflict cannot operate in two different fields without encroachment on each other.[16] The Federal Court may direct notice not only to the Province actually concerned but to the others who may have a contingent interest in the matter referred to the Federal Court. The Federal Court discharges other miscellaneous functions also under various sections of the Act such as the appointment of an arbitrator under S. 124, Cl. 4, determination of the extent of the Exe-

(15) *Per* Sulaiman, J. in his Order dated 23—6—1938 in C.P. Motor Spirit and Lubricants Taxation Act, 1 F.L.J., p. 16 (at p. 17).

(16) *Per* Sulaiman, J. in *Shyamakant* v. *Rambhajan*, 1939 F.C. 74 at 83.

cutive authority exercisable by a Federated State, assisting Commissions appointed for Settlement of Water Disputes by Governor-General [S. 131 (4)], hearing appeals from Rulers of States dissatisfied with the levy of an excessive Corporation tax under S. 139 (3), hearing appeals against decisions of the Railway Tribunal on questions of law under S. 196 (4) and so on. S. 208 provides for appeals to the Privy Council from the decisions of the Federal Court passed in its original jurisdiction without any leave in specified cases and in other cases with the leave of the Federal Court or of His Majesty in Council. The Federal Court has to administer the law of the Provinces, of the States and the Federal and International Law as determined by itself. The judgments of the Court being purely declaratory the execution thereof is left to the lower Courts. The Federal Court has not been granted expressly any power to issue writs of habeus corpus and though S. 215 empowers the Federal Legislature to make provision for conferring ancillary powers on the Federal Court it is doubtful whether such a power will be deemed to be one that enables the Court to 'more effectively exercise the jurisdiction conferred upon it by or under the Act'. A large part of the work of the Federal Court will thus lie in defining and delimiting the sphere of each legislature in regard to the legislation of each subject and to determine in what cases the Legislative acts are *ultra vires* and of no effect.[17] This brings us to a consideration of the Doctrine of *ultra vires* and its application in the interpretation of the Indian Statutes. The doctrine and its application will be discussed in the next chapter.

(17) For a detained exposition of justiciable disputes under the Government of India Act in regard to the Federal Court *vide*, (1938) 11 M. L.J. Journal portion commencing at pages 3, 53 and 135.

CHAPTER III.

Doctrine of Ultra Vires.

1. **Ultra Vires and Illegality Distinguished.**—*Ultra vires* literally means 'beyond power'. It refers to acts beyond the competency of the person doing them. Jurisdiction is general in its connotation and is the power to take cognizance in accordance to law and determine questions so taken cognizance of and to execute the decision passed as a consequence of that determination, while *ultra vires* refers to acts done by persons exercising powers either by virtue of a statute or otherwise, which are beyond the powers they possess.[1] Jurisdiction in no way depends upon the regular exercise of it or the passing of a right decision; for a Court has jurisdiction to decide rightly as well as wrongly, the remedy in the latter case being an appeal against the erroneous decision. Where jurisdiction is absolutely wanting, the act done would be a nullity and nothing can cure it. Illegality includes *ultra vires* but is not the same thing as *ultra vires*. They represent two distinct ideas. The former refers to the attribute which makes an act committed, itself illegal while *ultra vires* refers to the legal power to do the act. An act done by a body may be *ultra vires* in the sense that it is beyond the powers of that body but may not be illegal as it may not contravene the provisions of any law. By the word 'illegal' is meant an act which is wrongful

(1) Law of *ultra vires* in British India by S. R. Das, T. L. L. 1903, P. 2.

either on account of a statutory prohibition, or as one opposed to public policy or as one vitiated by fraud, coercion, undue influence or the like. It has no reference to the legal power of a person to do an act. *Ultra vires* on the other hand primarily refers to the overstepping or exceeding the legal powers of the doer. The doctrine has generally reference only to bodies or persons whose powers are limited either by statute or otherwise. The doctrine originally grew up in connection with corporations and joint-stock companies and was gradually extended in course of time to other bodies. It is a creature of judge-made law, and was originally founded on grounds of public policy and the exigencies of commerce. An Act may be *extra vires* of the directors of a corporation but *intra vires* of the company.[2] Where an act is done contrary to an Act and objection is taken to the Act itself, it is a misuse of the term to call the act of a party to a proceeding, *ultra vires*. It is the Ordinance or the Act that is *ultra vires* and not the act of the party.[3]

2. Primary and Secondary sense of the word.—An Act may be within the powers of a company but beyond the powers of the directors exercising the power on its behalf. This distinction is sometimes referred to as the primary and secondary meaning of the term *ultra vires*.[4] As Mr. Das points out "whereas *ultra vires* in the primary sense has regard to the rights or powers of the corporation, what is *ultra vires* in the secondary sense has regard to the rights or powers of the indivi-

(2) T.L.L. Law of *ultra vires*, p. 33.

(3) *Osuman Yau Ewna* v. *Nana Sir Ofori Atta*, 1930 P.C. 260.

(4) T. L. L. Law of *ultra vires*, p. 47.

dual persons who happen to be its members for the time being. The corporation is in the eye of the law, an entity quite distinct from the corporators. The rights and interests of the corporation are not identical with the rights and interests of the corporators.... it may happen that an act which is within the potential powers of a corporation is not within its actual powers and that it can exercise its potential powers in no other way than by overriding the rights of one or more of the corporators. Such an act is not absolutely *ultra vires* the corporation, for it has the potential power to do it; yet it is *ultra vires* in as much as it ought not to so exercise its powers as to prejudice the rights of any of its individual members without the consent of the latter." In the primary sense *ultra vires* would be a valid defence that could be set up without any limitation or qualification by all parties and in the secondary sense it can be set up only by those members whose rights are affected by an act of the majority and subject to non-waiver of their rights by those members. There can be no waiver in the first case; in the second, waiver may operate to validate the transaction in regard to those who have waived their objection to the transaction. The formalities to be observed by corporations may be discretionary, directory or mandatory.[5] Imperative formalities are those that form the essence of the transaction and the non-observance of which makes the transaction null and void and of no effect.[6] Directory formalities are such as do not affect the validity of the transaction as such and do not affect the rights of third parties dealing with the corporation

(5) T. L. L. Law of *ultra vires*, p. 54.

(6) *Ibid.*, p. 60.

in good faith. Parties who ratify or acquiesce in the omission of such a formality are estopped from questioning any claim arising out of the transaction. The ratification, however, should not be a fraud on the corporation. As examples of directory formalities may be mentioned those dealing with internal management, *e.g.*, the presence of a certain number of directors to make the quorum. The absence of a formality however, affects a transaction only to the extent of the formality failed to be observed. In cases where a corporation systematically neglects the mandatory formalities enjoined by law or otherwise, even the informal transactions will be upheld by Courts, for in such cases as the Vice Chancellor put it, 'there must be taken to have been a universal assent, as it seems to be to disregard its provisions.'[7] An act which is *ultra vires* in the primary or the absolute sense cannot be ratified but an act which is *ultra vires* only in a secondary sense can always be ratified, *i.e.*, acts which are *ultra vires* of the officials or directors of a corporation but not those which are *ultra vires* of the corporation itself. The principle of *ultra vires* often comes into play in the enforcing of by-laws which are local laws or regulations made by public bodies like municipalities or local boards or by corporations or societies formed for commercial and other purposes, railway companies, etc. The power conferred under the by-laws should be construed strictly in conformity with the provisions of the statute, or the other authority conferring the power. A rule empowering the making of by-laws relating to 'the level, width and construction of new streets', accordingly

(7) *Walter Case*: *Re Vale of Neath, etc.*, 3 De. G. and Sin 149 at 156.

does not empower the framing of a by-law enabling the pulling down of any new or existing buildings.[8] Mere interference with private property as such does not make a by-law *ultra vires* but it would be so, if a power given to control or govern a trade or commerce is employed to prohibit it altogether. To make a rule *ultra vires* it is not enough that it could not be made under the provision of law under which it purports to be made. It would be enough if the power can be found in some other section than the one quoted.[9]

3. **By-Laws and ultra vires.**—Craies in his Statute Law enumerates five grounds on which by-laws can be challenged as *ultra vires*:

(1) That they are not made, sanctioned and published in the manner prescribed in the statute authorising the same;

(2) As being repugnant generally to the laws of the country where they are to operate by making that unlawful which the general law says is lawful or *vice versa*;

(3) That they are repugnant to the specific statute under which they are made;

(4) On the ground of uncertainty;

(5) On the ground of unreasonableness.[10] The by-laws should be construed fairly but should not effect a restraint on the ordinary rights of subjects, including their right to trade more than the Legislature expressly intends to do. The restriction should not only not exceed the limits set to it by the Legislature

(8) *Brown* v. *Holyhead Local Board*, (1862) 32 L.J. 25.

(9) *Secretary of State* v. *Apparao and another*, 1924 M. 92.

(10) Craies, Statute Law, Fourth Edition (1936), p. 272.

but should under no circumstances be extended to other trades not contemplated by the original statute. In democratic countries where ample precautions are taken to see that the by-laws are passed after ample opportunity is given for their criticism, the Courts would be reluctant to interfere with the enforcement of the same on the ground of their unreasonableness. In *Kruse* v. *Johnson*,[11] Russell, C. J., stated his view in regard to this matter thus, "when the Court is called upon to consider the by-laws of public representative bodies clothed with sample authority accompanied by checks and safeguards which I have mentioned the consideration of such by-laws ought to be approached from a different stand point. They ought to be supported if possible. They ought to be, as has been said 'benevolently interpreted' and credit ought to be given to those who have to administer them that they will be reasonably administered." The same learned Judge pointed out that they could be invalidated on the ground of unreasonableness only if they were unequal in their operation between different classes, 'manifestly unjust, if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men' but not merely because some Judges might consider that they go farther than is prudent or necessary or convenient in their view. Of course, due regard is always had to the fact that a local body is best fitted to judge as to whether a particular rule is required in the area under its control or no and a Court would not in the absence of compelling reasons undertake to deter-

(11) (1898) 2 Q. B. 91 at 96.

mine whether it would have been more wiser and more prudent to make the by-law less stringent or whether it would have itself passed more reasonable by-laws.

What is reasonable and what is not, is in several cases a matter of opinion and Courts of law should be very slow and cautious in interfering with the authority of a local body or pronouncing its by-laws unreasonable.[12]

4. Colonial Legislatures and ultra vires.—The following propositions enunciated by H. A. Street in his work on Doctrine of *Ultra vires* neatly summarise the principles of *ultra vires* as applied to Colonial Legislatures and to a large extent are applicable to the Indian Legislatures as well.

(*i*) 'Colonial Legislatures have whatever powers are incidental or ancillary to powers conferred by their constitution';

(*ii*) 'Powers of legislation are confined within the local limits of a colonial jurisdiction';

(*iii*) 'A Colonial Legislature may delegate its powers, but not so as to efface itself';

(*iv*) 'Where the valid and invalid portions of a colonial statute cannot be separated, the whole statute, is *ultra vires*';

(*v*) 'An *ultra vires* colonial statute may be ratified by the Imperial Legislature';

(*vi*) 'An *ultra vires* statute cannot be validated by acquiescence but an acquiescing party may be estopped from questioning it';

(12) *Per* Mohammad Ismail, J., in *Mewa Ram* v. *M. M. Board*, 1939 All. 466 at 480 **(F.B.).**

(*vii*) 'A Legislature may plead the *ultra vires* character of its own statute';

(*viii*) 'A colonial Legislature has every power not expressly denied to it and consistent with its non-sovereign character';

(*ix*) 'A Legislature is not bound to exercise its powers with discretion';

(*x*) 'A Legislature may bar an action for restitution arising out of its own *ultra vires* statute';

(*xi*) 'A Legislature may be able to protect itself against *ultra vires* acts by taking power to consult the Courts before hand';

(*xii*) 'The Courts will presume that legislation was intended to be *intra vires* and also reasonable';

(*xiii*) 'Implied powers will be negatived by express powers';

(*xiv*) 'In judging the validity of a transaction, the substance is more important than the form'.[13]

4. (a) **Acts may be ultra vires only partially.**—If the invalid part of a statute is separate and distinct from the valid parts thereof and if both are not inextricably connected it is only the former that would be *ultra vires* and not the latter: vide *The King* v. *The Commonwealth Court of Conciliation.*[14] The test laid down in the above case was to examine whether the statute with the invalid portions omitted would be substantially different as to the subject-matter dealt with by the remaining

(13) *Vide* propositions 181 to 196 in a Treatise on the Doctrine of *ultra vires* by H.A.Street (1930), Sweet and Maxwell, Part VII, Ch. II, pp. 420 to 447.

(14) (1890) 11 C.L.R. 1

statute from what it would be with the omitted parts forming part of it. If it is so, the whole Act would be *ultra vires.* In other words, where there is an indissoluble and indivisible scheme for the attainment of an object contemplated by the Legislature, an independent clause in that Act cannot be separated from the rest and the whole Act would be *ultra vires.* As was pointed out In re *Initiative and Referendum Act*[15] where the offending provisions are inter-woven into an Act and are not severable, the whole Act is *ultra vires.*[16] The above principle was referred to with approval by Sulaiman, J., in *Shyamakant* v. *Rambhajan.*[17] In another case the Calcutta High Court while holding that the Gazette notification under S. 1 (3) of the Assam Court of Wards Amendment Act (1937) published on 12th January, 1938, to the effect that the said Act would commence not at a subsequent date but from a prior date, viz., 5th November, 1937, was *ultra vires,* also held that the whole notification need not be rejected but the same could be severed and it was bad only so far as it related to the period between 5—11—1937 and 11—1—1938 (both inclusive) and was good as to the subsequent period.[18]

4. (b) Ultra vires and Repugnancy.—It has already been pointed out that under S. 107 of the Government of India Act, 1935, in the case of legislation passed in regard to a subject on the concurrent list the Provincial

(15) A.I.R. 1919 P.C. 145=1919 P.C. 935=88 L.J.P.C. 142 (P.C.).

(16) See also *Attorney-General for British Columbia* v. *Attorney-General for Canada,* A.I.R. 1937 P.C. 93=168 I.C. 10=1937 A.C. 377 =106 L.J. P.C. 64 (P.C.).

(17) 1939 F.C. 74 at 84.

(18) *G. P. Stewart* v. *Brojendra Kishore,* 1939 C. 628.

Legislation would be void for repugnancy to the extent it is in conflict with any Federal Law or any existing Indian law. In such cases it may not be necessary for a whole Act or a whole section being declared invalid but it is only that much of it which is actually repugnant that would be void. There is competency to enact but the legislation is invalid to the limited extent it is in conflict with the other legislation referred to therein. In such cases the rule to be followed has already been stated. As was pointed out in *Kutner* v. *Philips*;[19] unless the two Acts are so repugnant to each other that effect cannot be given to both at the same time or there is a necessary inconsistency in the two Acts standing together the law would not presume a repeal by implication. There must be an actual collision by the operation of two legislatures over the same field. In such cases the fact that it is possible to obey both laws is not necessarily a test of their inconsistency as statutes may not merely impose duties but confer rights and one statute might take away a right conferred by another statute in which case they would be clearly inconsistent. The true test to determine whether one law is repugnant to another is to see whether the dominant law has expressly or impliedly evinced its intention to cover the whole field and a subordinate law in the same field is opposed thereto, in which case the latter would be inoperative. The question in each case depends on the language employed.[20] In the cases arising under S. 100 of the Act, however, which prescribes the exclusive legislative sphere of the Federation and the Provinces and refers to cases of ovelapping,

(19) (1891) 2 Q.B. 267=60 L.J.Q.B. 505=64 L.T. 628.

(20) *Per* Narsing Rau, J. in *G. P. Stewart* v. *Brojendra Kishore*, 1939 C. 628.

there is no competency at all for one Legislature to legislate on subjects assigned exclusively to the other Legislature and any such legislation passed contrary to the terms of that section would be wholly *ultra vires*.

5. **Effect of Imperial Statutes on India.**—It is necessary to determine in the first instance the effect of Imperial Statutes on India and to consider what exactly are the powers of the Indian Legislature for a correct ascertainment of whether any Act passed by such Indian Legislature or any of its provisions is *ultra vires* of such legislature or no.

6. **Laws and usages of Natives untouched except by specific Legislation.**—India was neither conquered nor planted as a colony. It was a settlement originally made by a few foreigners for purposes of their trade, 'in a very populous and highly civilized country under the Government of a powerful Mahomedan Ruler with whose sovereignty the English Crown neither attempted nor pretended to interfere for some centuries afterwards. The laws and usages of Eastern countries where Christianity does not prevail are so at variance with all principles, feelings and habits of European Christians that they have usually been allowed by the weakness or the indulgence of the potentates of the countries to retain the use of their own laws, and their factories have for many purposes been treated as part of the territory of the sovereign from whose dominions they come. But the permission to use their own laws by European settlers does not extend these laws to natives within the same limits who remain to all intents and purposes subject of their own sovereign and to whom European laws and usages are as little suited as the laws of the Mahomedans and Hindus are suited to

Europeans'.[21] As was pointed out in the same Privy Council case the Crown might by express enactment alter the laws of the country and till it is so done the laws of the natives remain unchanged. The question therefore whether British statutes are applicable to British subjects, depends on the question whether the British law has been introduced into that part of the country and to see whether it is capable of enforcement amongst such people without working out injustice. The general introduction of British Law in the Presidency Towns does not of itself bind the native subjects unless it is appropriate to the condition of things.[22] It was held on the above principles that the law against Bigamy or of Maintenance and Champerty, the law incapacitating aliens from holding property, the Sunday Observance Act and the law prohibiting marriage with a deceased wife's sister, were not enforcible in India as specific laws*.

7. **Powers of the Indian Legislatures.**—So far as the powers of the Indian Legislature are concerned, Lord Selbourne expressed himself thus: "The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it and it can of course do nothing beyond the limits which circumscribe these powers. But where acting within these limits it is not in any sense an agent or delegate of the Imperial Parliament but has, and was intended to have plenary powers of legislation, as large and of the same

(21) Ilbert, Government of India; see also *Advocate-General* v. *Soonomoyee Dasi*, 9 M.I.A. 387.

(22) *Ram Coomar Coondoo* v. *Chander Kantoo Mookherjea*, 1908 L.R. 35 I.A. 48.

*Craies: Statute Law.

nature, as those of the Parliament itself. The established Courts of justice, when a question arises whether the prescribed limits have been exceeded must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument, by which affirmatively, the legislative powers were created and by which negatively they are restricted. If what has been done is legislation within the general scope of the affirmative words which give the power and if it violates no express condition or restriction by which that power is limited (in which category would of course be included any Act of the Imperial Parliament at variance with it) it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions".

8. **Restrictions on Legislative powers.**—The restrictions on the legislative powers of an Indian Legislature are provided for in Chapter II of Part V of the Government of India Act, 1935. The first restriction is that no Act of the Indian Legislature can affect the power of Parliament to legislate for British India. The Government of India Act does not contain a power to alter the Indian constitution which can be done only by the British Parliament. Sub-S. (5) of S. 6 of the Act lays down a restriction on the powers of Parliament to legislate for matters mentioned in the second schedule attached to each Instrument of Accession. The amendment of the said provisions except where they are accepted by the Ruler of a state by a supplementary instrument shall not be construed as extending to functions exerciseable by His Majesty or the Federal authority in relation to a State. So far as the Indian Legislatures are concerned neither the Federal nor the

Provincial Legislature can legislate in matters affecting the sovereignty or dominion or suzerainty of the Crown in any part of India, the British Nationality or the Army Act or the Air Force Act or the Naval Discipline Act or the Law of Prize and Prize Courts. It cannot likewise amend the provisions of the Government of India Act or Orders in Council or rules made thereunder by the Secretary of State or the Governor-General or the Governor in their discretion or in the exercise of their individual judgment or pass any rule or law in any way derogating from the prerogative of His Majesty to grant special leave to appeal from any Court subject only to any express permission granted under the Government of India Act itself. As regards the powers of the Indian Legislatures to affect the jurisdiction of the High Courts there was some difference of opinion prior to the Government of India Act, 1935. Thus under the Government of India Act, 1915 an attempt was made to deal with the separate matters that were to form the subject of legislation by the Central and the Provincial Legislatures. A list of subjects to be legislated upon by the Central Legislature was mentioned in S. 65 and the provisions of Schedule 5 and S. 131 (3) and for the local Legislatures provision was made in S. 79. These were retained in the Act of 1919, a consolidating Act and S. 79 became part of S. 80-A. It was found necessary, however, to make a more elaborate division of the subjects than could be embodied in the Act itself and consequently S. 45-A was added to the Act providing for rules classifying the subjects into Central and Provincial. These rules contained a provision under which the Provincial Legislature could with the previous sanction of the Governor-General pass laws affecting the jurisdiction

and powers of the High Court. In *Masoon Ali Khan* v. *Ali Ahmad Khan*,[23] a Bench of the Allahabad High Court held that the Local Legislature had such power derived from the Government of India Act, 1919, the Letters Patent (S. 44), or the Civil Procedure Code. In a more recent Full Bench case of the Calcutta High Court arising under the earlier Government of India Act, 1915, *Narasing Das* v. *Chogemull*,[24] the above decision was dissented from and it was held that the Bengal Agriculturist Debtors' Act (VII of 1936) purporting to limit the jurisdiction of the High Court in its original jurisdiction clearly affected the jurisdiction conferred under S. 106 of the Government of India Act, 1915 and was therefore *ultra vires* of the powers of the Bengal Provincial Legislature notwithstanding the fact that sanction had been accorded thereto by the Governor-General under S. 80-A (3) of the Government of India Act. Under the Government of India Act, 1935, the Federal and Provincial Legislatures have wide powers to legislate in matters relating to jurisdiction, powers and authority of all Courts in British India except the Federal Court, and of all the Courts in the Province respectively (*Cf.* Sch. VII, List I, Item 53; List II, Items 1 and 2 and List III, item 15) and Federal or the Provincial Legislature would if so minded be able to deprive the High Courts of much of their jurisdiction and to transfer it to Courts of inferor jurisdiction. To safeguard the position of the High Courts the Instruments of Instruction issued to the Governors and the Governor-General contain directions that Bills derogating from the powers of the High Court should

(23) 1933 All. 764=55 All. 1008=147 I.C. 148.

(24) 1939 Cal. 435 (F.B.).

be reserved for the consideration of the Governor-General and for the signification of His Majesty's pleasure. S. 224, sub-S. (2) takes away the jurisdiction of the High Court to question any judgment of an inferior Court not otherwise subject to appeal or revision and subject to the same the powers of the High Court existing before the commencement of Part III of the Act (relating to the Governor's Provinces) continue to be in force as mentioned in S. 223.

9. **Spheres of Legislative Activity.**—Subject to the above limitations, the Federal Legislature can legislate for matters provided in the exclusive Federal list and the Provincial Legislature for those mentioned in the exclusive Provincial List and any Act passed by the one Legislature invading the province of the other would be *ultra vires*. The validity of legislation as regards matters mentioned in the concurrent list depends upon the fulfilment of the conditions laid down in S. 107 of the Act which deals with the repugnance between the Federal and Provincial Legislation in the concurrent field and which legislation is to prevail under the circumstances referred to therein. No general test applicable to all cases can be laid down to determine when a Provincial enactment indirectly interfering in some degree with the powers of the Federation is or is not *ultra vires* and each case has to be determined with reference to the facts of that case.[25] As their Lordships of the Privy Council put

(25) *John Deere Plow Co., Ltd.* v. *Wharton*, 1914 P.C. 174=1915 A.C. 330=34 L.J. P.C. 64=112 L.T. 183=31 T.L.R. 35 (P.C.); *Great West Saddlery Co.* v. *The King*, 1921 P.C. 148=(1921) 2 A.C. 91=90 L.J. P.C. 102 (P.C.); quoted with approval in 1939 P.C. 53 at 56; see also *Union Colliery Co. of B. C., Ltd.* v. *Bryden*, (1899) A.C. 580=68 L.J. P.C. 118.

it in 1939 F.C. 53 (A.I.R.) admitting that a test applicable to every case of overlapping powers specified in Ss. 91 and 92 is more than elusive, yet it is often comparatively easy to determine that a particular piece of legislation is an encroachment on a forbidden territory. In the first place the whole scheme for distribution of powers as laid down in the Constitution Act should be considered and if a given subject-matter falls clearly within any class of subjects it cannot be treated as covered by any other class. For the latter purpose all the lists of categories should be compared to ascertain under which head rather than another a particular subject *prima facie* falls. Where a question of difficulty arises the effect of the legislation has to be considered and for the said purpose either public general knowledge of which the Court can take judicial notice or other evidence throwing light on the matter may be taken advantage of, such as the Acts of Legislature already operating in the country or the legislative history of a province whose enactment is in question. The object or purpose of the Act may have then to be examined keeping in mind that it is not competent for the Federation or a Province to carry out an object beyond its powers or trespass on the exclusive powers of the other in the guise of exercise of its own powers.[1] The intention to be gathered is, however, of the 'incorporeal entity', the Legislature, and not the speeches of individual members which have little or no evidential weight. Nor has the interpreting Court any concern with the wisdom of the Legislature whose enactment is attacked. It was held in the above Privy

(1) *A.-G. for Ontario* v. *Reciprocal Insurers*, (1924) A.C. 328. *See* In re *Insurance Act of Canada*, (1932) A. C. 41=101 L. J. P. C. 26.

Council case that while normally speaking it would be improper to link the question of *ultra vires* with the possible serious consequences of excessive taxation, it might have to be taken into account where it amounts to a prohibitive levy.[1-a]

10. Illustrations.—A few illustrations from decided case both before and after the passing of the Government of India Act, 1935 would be of great help in appreciating the actual application of the principles of interpretation already stated in actual judicial practice in the Indian Courts.

11. Service in India at the pleasure of the Crown—Effect of Rules under the Government of India Acts.—One set of cases that has called for frequent interpretation of the Government of India Act both by the Privy Council and the High Courts is in regard to the right of the Crown to dismiss its officers. S. 96-B of the Government of India Act, 1919[2] deals with this matter. The question that has often cropped up for consideration is what exactly is the effect of the rules framed under S. 96-B of that Act and whether they confer a right upon a servant of the Crown to sue the Secretary of State representing the Crown for damages for wrongful dismissal or for reinstatement in the office from which he happens to be dismissed or for other reliefs. Their Lordships of the Privy Council in two recent cases negatived the claim of the officers of Government to relief under the provisions of the Government of India Act, 1919. In the first case[3] a

(1-a) *See* observations of Lord Chancellor Maugham in 1939 F.C. 53 at 58.

(2) *Cf.* S. 176 of the Government of India Act, 1935.

(3) *Venkata Rao* v. *Secretary of State for India in Council*, (1937) 1 M. L. J. 529 (P.C.).

reader in the Government Press, Madras was suspected of being connected with the leakage of some pleadership examination papers and was directed to vindicate his character in a Court of law which he did by getting an *ex parte* decree for damages in a Civil Court against the person who was responsible for the trouble but before he got the judgment he was dismissed from service. The second case[4] related to a sub-Inspector of Police in the Madras Presidency who was at first made to retire on an invalid pension and after he received his pension for three months was dismissed from service and his pension put an end to. The question that arose for consideration in both cases was whether there was a cause of action against the Secretary of State—which their Lordships answered in an emphatic negative, notwithstanding the fact that in both cases their Lordships found there was a flagrant violation of the rules framed under the Act regulating the appointment and control of officers in Civil Service in India and the opening words in S. 96-B 'subject to the provisions of this Act and the rules made thereunder'. In the first case their Lordships found there was 'a serious and complete failure to adhere to important and indeed fundamental rules' and that 'mistakes of a serious kind have been done which call for redress' and in the other the whole procedure adopted was found to be a mere nullity but their Lordships felt unable to interfere except by remarking that they trusted that the executive Government in whose pleasure lay the responsibility of giving redress, would give it and that there was both time and opportunity for appropriate relief being granted by the Government in the cases they had to

(4) *Rangachari* v. *Secretary of State*, (1937) 1 M.L.J. 515 (P.C.).

decide. Their Lordships reiterated the general position that the servants of the Crown hold their office at the pleasure of the Crown[5] except in cases where it is specifically provided otherwise.[6] If any public servant deemed himself aggrieved, his appropriate remedy lay not in a law suit but by an appeal of an official or political kind. The rules and regulations are merely directions given by the Crown for general guidance and do not constitute a contract between the Crown and its servants. It was too 'far reaching and artificial' to suggest that there would be a special kind of employment during pleasure but with an added contractual term that the rule were to be observed. The rules make careful provision for redress of grievances by administrative process but confer no right of action against the Secretary of State as representing the Crown. They contain an assurance that the tenure of office though at pleasure will not be subject to "capricious or arbitrary action" but will be regulated by rule. Their Lordships pointed out that supreme care should be taken to carry out the assurance and the very fact that the Government is the ultimate determining body cast a heavy responsibility on them of strictly adhering to the rules and making the right of appeal provided therein a real and substantial one and to make proper redress if real wrong is done. What applied to employment applied also to failure to employ; no action was sustainable for a breach of promise to re-employ.[7] With reference to S. 32 of the Act their Lordships of the Privy Council did not assent to the view taken by the High Court that

(5) *Shenton* v. *Smith*, (1895) A.C. 229.

(6) *Gould* v. *Stuart*, (1896) A.C. 575.

(7) *Krishnaji Nilkant Pitkar* v. *Secretary of State*, 1937 B. 449.

it in any way barred or limited the right of action against the Government which would otherwise be enforceable against it and remarked that if their Lordships did not find in the two cases cited above that the plaintiffs' services were terminable at pleasure, they would not be prepared to say that the remedy by suit would not be available to the plantiffs as that section was mainly directed to penalties and procedure and did not relate to a right of action. The English Common law rules that the King can do no wrong or that he cannot be sued in his own Courts did not apply in India where the Crown has submitted itself by statute, through its character as the successor to the East India Company to certain remedies and had constituted the Secretary of State for India in Council as a corporate body to represent it for being sued in respect of those remedies.[8] S. 65 of the Government of India Act, 1868 and S. 32 of the Act of 1919 placed the Secretary of State in a position quite different from that of the Crown under the Common Law of England. S. 32 of the Act of 1919 preserved and re-enacted that all individuals in India were as against the Crown 'as the successor in Government of East India Company' to be able as a matter of jurisdiction in the Crown's own Courts to sue the Crown through its established representative the Secretary of State in all those classes of cases in which the East India Company might have been sued in 1858. In all such cases it is the character of the suit and not whether it would have succeeded that determines the question of their maintainability.

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(8) *Secretary of State* v. *J.C. Maurice*, 1937 R. 89 (S.B.). *See also Krishnaji Nilkant Pitker* v. *Secretary of Sstate*, 1937 B. 449.

In a recent case the Federal Court had to consider the 'apparent' conflict between the provisions of S. 84 (2) of the Government of India Act, 1919 (which in terms provides that nothing in that Act or in any rule made thereunder should be construed as in any way diminishing the powers of the Indian Legislature as laid down in S. 65 of that Act) and those of S. 129-A which lays down that rules made by the Governor-General in Council with the sanction of the Secretary of State in Council shall not be subject to repeal or alteration by the Indian Legislature) and whether an Act passed by the Central Legislature in regard to the crediting of fines in the Criminal Courts of a province was *ultra vires* of the Central Legislature. In answering the question in the negative, their Lordships of the Federal Court pointed out that the Devolution Rules of 1920 were really subordinate to the legislative power of the Indian Legislature and could not override the latter. It was pointed out that S. 65 of the Act confers on the Indian Legislature a general power to legislate for all persons, all Courts and all places and things in British India and S. 84 (2) further enacted that nothing in the Government of India Act or in any rule made thereunder should be construed as diminishing in any respect the powers of the Indian Legislature as laid down in that section and further that the validity of any Act of the Indian Legislature should not be open to question in any legal proceedings on the ground that it affected a provincial subject. The learned Chief Justice held S. 129-A had reference to legislation purporting specifically to repeal, alter or amend, the Devotion Rules and not to legislation which was 'merely inconsistent' with such rules and which could be said to

repeal them only by implication. 'Indeed,' said his Lordship, 'if any other interpretation were adopted, the whole purpose of S. 84 (2) would have been defeated for that enactment was designed to make the new distribution of powers between the centre and the provinces an administrative and domestic arrangement only.[9] The Provincial Governments and the Legislatures, though they obtained a much greater measure of freedom than they had enjoyed hitherto were not entirely free from Central Control and the Central Legislature still retained by virtue of S. 84 (2) of the Act the power to legislate for the whole of British India.

12. Indian Decisions on the Government of India Act, 1935.—Other illustrations may be given to indicate the spirit in which the Government of India Act, 1935, is administered. In *Tulasi Charan Goswamy* v. *M. Azizul Huque*,[10] Lort Williams, J., held that a Governor appointed under the older Act of 1919 could function as such after the new Act had come into force though not appointed under the same with a Commission under Royal Sign Manual as required under the new Act, as S. 321 of the 1935 Act recited clearly that appointment prior to the new Act had the same effect as one to a corresponding office under the new Act. His Lordship held the section was not happily worded and the words "without prejudice" created some difficulty but any other construction than the one placed by his Lordship would make the section self-contradictory. On similar ground a Full Bench of the Allahabad High Court held that the mere fact that a High Court Judge

(9) *United Provinces* v. *Governor-General in Council*, 1939 F.C. 58 at 62. *Per* Gwyer, C.J.

(10) 1938 C. 163.

has been made permanent after the passing of the Government of India Act of 1935 (in this case the order was passed previous to the Act but to come into effect after the Act had come into operation) did not necessitate his taking of a fresh oath of allegiance where he had taken the oath at the time he assumed office prior to the coming into force of the Act and S. 223 of the Act gave the same powers to the High Court Judges after the Act as they had before the Act was passed.[11] Where the Chief Justice of a High Court dies, the office does not die with him but remains vacant till it is filled up but such a vacancy shall not affect the validity or the due constitution of the High Court though under Cl. (1) of S. 220 of the Government of India Act, 1935, a High Court should consist of a Chief Justice and other Judges. A vacancy so far from implying abolition of office implies its existence and so long as the office exists, the constitution remains unbroken and unchanged.[12] The Local Legislature of the United Provinces could not make laws affecting lands outside its limits notwithstanding that the previous sanction of the Governor-General had been obtained and hence a suit on usufructuary mortgage comprising territories in United Provinces as well as Delhi was not maintainble in the United Provinces Courts.[13] A ministry chosen from the elected representatives of the people and empowered within the prescribed limits to direct the executive policy of the Government can in no sense be called a body of officers subordinate to the Govern-

(11) *Hirasingh and others* v. *Jai Sing and others*, 1937 All. 588= 1937 All. L.J. 840 (F.B.).

(12) *Emperor* v. *Sohrai Koeri and another*, 1938 Pat. 550.

(13) *Haji Sheik Vahid Vuddin* v. *Makanlal and another*, 1938 All. 564.

ment.[14] A member of the subordinate medical service in charge of a grant-in-aid dispensary is a 'servant of the Crown' (which means the same thing as a 'servant of the Queen' as defined in the Indian Penal Code) as Crown services include subordinate services as well as superior services. 'Affairs of a province' in S. 270 of the Act apply not merely to the executive Government of the province but also local Self-Government within the province and Crown servants lent to local bodies can be said to be concerned with the affairs of a province as opposed to affairs of the Central Government.[15] An appeal is a continuation of proceedings in the lower Court within the meaning of sub-S. (2) of S. 179 and hence where a suit is pending at the commencement of the Act of 1935 the only respondent to be added is the Secretary of State and a province cannot be added as a party to the proceedings.[16] The right to a writ of *certiorari* can be taken away only by express legislation passed by an appropriate legislature such as S. 106 of the Government of India Act, 1916 and in all other cases the Government of India Act, 1935, preserves all powers of a High Court that it possessed before the passing of the Act.[17] An exception is made in matters of revenue by statute.[18] A recent Full Bench decision of the Madras High Court has held overruling the earlier Full Bench decision in 45 Mad. 922 that the Common law prerogative writ or *habeas corpus* has been taken away in cases covered by S. 491 of the Criminal Procedure

(14) *Dhirendranath Sen and another* v. *Emperor*, 1938 C. 721.

(15) *S. D. Marathe* v. *Pandurang Narayan Joshi*, 1938 Bom. 419.

(16) *Lahore Electric Supply Company, Ltd.* v. *Secretary of State*, 1938 Lah. 585.

(17) *B. S. Murty* v. *Eli Vadapalli and others*, 1937 M. 660.

(18) *Thyagaraja* v. *Collector, Madras*, 1936 M. 398.

Code by Acts of Indian Legislature passed in 1875 and in subsequent years and that the powers of the Supreme Courts were cut down by express legislation. The Rules 2 and 2-A of the Madras High Court, Appellate Side Rules, requiring matters under S. 491, Cr.P.Code, to go before a Bench of the High Court are *intra vires* and the same apply to a case of a prerogative writ on the assumption that the right to the same exists. A single Judge of the High Court cannot accordingly pass an order under S. 491 directing a writ of *habeas corpus* to be issued. The legislative power exercised by the Governor-General in enacting in the Criminal Procedure Code of 1875 onwards provisions withdrawing the power of issuing such a writ from the powers of the High Court in no way offends the proviso to S. 22 of the Indian Councils Act, 1861, which prohibits the Governor-General in Council from making laws affecting any part of the unwritten laws of the constitution of the United Kingdom whereon may depend in any degree the allegiance of any person to the Crown.[19] The Government of India Act contains no provisions requiring the Governor to consult the Ministers before performing executive acts. The Instrument of Instructions no doubt assumes that the Governor would consult the Ministers but he is not legally bound to do so and the remedy on the part of the Ministers for an unconstitutional act on the part of the Governor is not any legal action but lies in their resignation if they consider that the unconstitutional act is of such importance as to require such a step.[20] A Court cannot take into

(19) *District Magistrate, Trivandrum* v. *K. C. Mamman Mappillai and others,* 1939 M. 120=1938 M.W.N. 1289 (F.B.).

(20) In re *S. S. Batliwala,* 1938 M. 758.

account the principles of a political party and declare an offence punishable under the existing law not so punishable because it does not contravene the principles of the political party in power at any particular time.[21] A sanction of the Governor-General in Council under S. 67 (2) (*b*) of the Government of India Act for the introduction of a Bill 'to regulate the marriage of children amongst Hindus' is not rendered inadequate by the Select Committee recasting the Bill by changing the method of restraining such marriages and making the measure applicable to all classes and communities, nor does the Act ultimately passed become *ultra vires* on account of fresh sanction not being obtained on account of the two new features introduced, *viz.*, introduction of a penal provision and applicability of the measure to non-Hindus as well, especially where the case in point related to the Hindus. It was pointed out that so far as Hindus at least were concerned there was no substantial difference between the objects of the Bill as originally framed and the Act as ultimately passed, the imposition of a civil liability in the one case or of a penalty in the other being immaterial so far as S. 67 (2) (*b*) was concerned. There was for some time a difference of opinion as to whether the Child Marriage Restraint Act above referred to applied to offences under that Act committed outside British India[22] but the same has been set at rest by the Amending Act (VII of 1938). The Hindu Women's Rights to Property Act (XVIII of 1937) is not invalid on account of the assent of the Governor-General thereto having been obtained only on 14—4—1937 after the Government of

(21) In re *S. S. Batliwala*, 1939 M. 758 at 763.

(22) See *Narayan Mudalagiri* v. *Emperor*, 1935 Bom. 437=59 Bom. 745; *Sreeramamurthy* v. *Ranganayakalu*, (1937) 1 M.L.J. 388.

India Act, 1935 had come into force (on 1—4—1937) as the old Legislature which had already passed the Bill before the commencement of the Act was continued by S. 317 of the Act but the opinion has been expressed that the subsequent Amending Act passed after the coming into operation of Part III of the Act is invalid as 'intestacy and succession' as regards agricultural lands are in the provincial sphere and require provincial legislation to validate any measure regarding the same.[23] Where the competition was between excise duties mentioned in the Federal list and a sales tax in the provincial list of the Government of India Act 1935, the Federal Court took into consideration the previous legislative practice that obtained under the Government of India Act, 1919, which confined excise duties to cases of production and manufacture of such goods and to those payable by such manufacturer or producer on the issue of excisable goods from the place of manufacture or production and the Oxford Dictionary meaning of the word 'excise', itself taken from Encyclopaedia Britannica as meaning 'a duty charged on home goods either in the process of their manufacture or before their sale to home customers' and held that the Provincial Legislature was competent to legislate for a sales tax of 5 per cent. on the sale of motor spirits and lubricants and did not in any way

(23) *See* para. 50 at page 85 of *Mayne's Hindu Law* (Tenth Edition) by Srijut S. Srinivasa Iyengar. The real question, however is whether the undoubted power of the Federal Legislature to legislate generally on matters relating to 'intestacy and succession save as regards agricultural land'. Under item 7 of the concurrent list is in any way cut down or taken away by the specific right of the Provinces under Item 21 of the Provincial List to legislate in regard to the 'devolution of agricultural land' more especially when the measure in question does not purport to affect 'agricultural lands' in particular and when both the Legislatures can function within their respective spheres'.

encroach upon the powers of taxation of the Central Government. His Lordship, Sir Maurice Gwyer, C.J., found in this case that most of the Dictionary meanings relied upon before his Lordship were drawn from Blackstone and were wholly incorrect and inapplicable to India. His Lordship ultimately held it would be strange indeed if the Central Government had the exclusive power to tax retail sales even if the tax is confined to goods produced or manufactured in India when the provinces have an exclusive power to make laws with respect to trade and commerce and with respect to the production supply and distribution of goods within the province. The Central Province and Berar Sales of Motor Spirit and Lubricants Taxation Act was accordingly not *ultra vires* of the Legislature of Central Provinces and Berar.[24] Justice Sir Shah Sulaiman held that if the authority to legislate is clear the Act should not be held to be invalid merely because it may be feared that the authority may be abused in future.[25] Justice Jayakar responded to the appeal made to his Lordship that the interpretation of Item 48 of List II should be so made as to give it, 'a content sufficiently extensive for the growing needs of the provinces' and that Provincial Autonomy would be 'unmeaningful and empty' unless fortified by adequate sources of revenue, by remarking that whatever may be the value of such an appeal in a judicial decision, His Lordship personally appreciated it and felt the interpretation put by the Court in the case was sufficiently practical as to leave a large source of revenue in the provinces without making any inroads on the centre.[1]

(24) In re *C. P. Motor Sprit Act*, 1939 F.C. 1 (A.I.R.).
(25) *Ibid.*, at 30.
(1) *Ibid.*, at 41.

The provisions of S. 16 of the Bihar Money-Lenders Act (III of 1938) read with S. 17 of the same Act were held to be void as they enjoined the Court to fix the value of properties put up for sale and insert the same in the sale proclamation and to sell the properties for a price not lower than the one so fixed and they were repugnant to the proviso to Order 21, Rule 66 of the Civil Procedure Code (as amended by the Patna High Court under its rule-making power) which forbade the insertion of the estimated value of my property by the Court in the sale proclamation but directed instead that a statement should be appended to the valuation, if any given by the parties that it could not be vouched as correct by the Court. The Act was Provincial Legislation on a subject in the concurrent list repugnant to the provisions of an 'Existing Indian Law', the Civil Procedure Code in this case. The two provisions were so contradictory that they could not stand together and S. 107 rendered the provincial legislation void, as the only method by which it could be rendered valid, *viz.*, the securing of the assent of the Governor-General or of His Majesty, etc., was not adopted in this case.[2] Since the above decision was passed the Behar Legislature has repealed provisions of the Bihar Money-Lenders Act (III of 1938) including Ss. 16 and 17 thereof and substantially re-enacted them in the Bihar Money-Lenders (Regulation of Transactions) Act, (VII of 1939) an Act which was reserved for the consideration of His Excellency the Governor-General and which had actually received His Excellency's assent on 15—4—1939 and had come

(2) *Viswanath Narayan Singh* v. *Harihar Gir*, 1939 Pat. 90=19 Pat. L.T. 760.

into force on 3—5—1939. The Federal Court had thus no occasion to decide the validity or otherwise of the earlier Act of 1938 in *Shyamakant* v. *Rambhajan*,[3] though the same point was raised before it for determination by that Court. A Full Bench of the same High Court held that S. 11 of the same Act (Bihar Money-Lenders Act) was repugnant to the earlier existing law, *viz.*, S. 2 of the Usury Laws Repeal Act (1855) under S. 107 (1) of the Government of India Act and was likewise void. S. 11 of the Bihar Act provides that a Court shall not grant a decree towards interest of an amount equal to more than the principal whereas the Usury Laws Repeal Act directs that the interest shall be adjudged or decreed by the Court according to the agreement between the parties and the latter being the prevailing law at the date the Government of India Act was passed in regard to a matter relating to contracts, which occurs in the concurrent list and the sanction of the Governor-General not having been obtained in this case also the Provincial Legislation so far as S. 11 was concerned was void and of no effect.[4] The objection was not on the ground that the Provincial Legislature had no power to pass the legislation—for it clearly fell under the head of money-lending under Provincial List —but on the ground that it offended S. 107 which provides for cases of overlapping and repugnancy. The powers of the Provincial Legislature under the Government of India Act were restricted in two ways, *viz.*, (*i*) by limiting them and making them subject to the powers

(3) 1939 F. C. 74 (A.I.R.); In 1940 F.C. 1 (A.I.R.) and in (1940) F.C. 3 (A.I.R.) the validity of Act VII of 1939 was affirmed.

(4) *Sadanand Jha* v. *Aman Khan*, 1939 P. 55=1938 Pat.W.N. 913 =20 Pat.L.T. 1 (F.B.); *see also* (1940) F. C. 1 (A.I.R.) where the validity or otherwise of S. 11 of the Act of 1938 was felt unnecessary to decide.

of the Federal Legislature notwithstanding the exclusive powers granted to the said Legislature under List II and (*ii*) by making provision for what legislation is to prevail in cases of actual conflict in any one field, thus supplementing S. 100 by S. 107 in resolving a conflict between the two Legislatures. Their Lordships in the above case discouraged the extensive reference to Canadian cases decided by their Lordships of the Privy Council on the construction of Ss. 91 and 92 of the British North America Act especially on the doctrine of the 'general' and the 'special' and of 'the occupied field' as there were vital differences between the two constitutions. Under the Canadian constitution exclusive powers are granted to the Provincial Legislature in regard to matters specified in S. 92 and while conferring full power on the Dominions with reference to matters specified in S. 91, the constitution leaves residual power in the Dominion Parliament under the head of 'peace, order and good Government' of Canada, which is wholly absent in the Indian Act. Under the Indian Act again, powers are given both exclusively and concurrently which is not the case with the Canadian constitution. As was pointed out by Justice Manohar Lall in the above case it was not as though the Provincial Legislature was deprived of the power conferred on it (by the inclusion of money-lending in the provincial list) because the power can always be exercised by adopting the method pointed out in S. 107, sub-S. (2) by obtaining the assent of the Governor-General or of His Majesty beforehand. In a Full Bench case of the Madras High Court[5] the position was somewhat differ-

(5) *Mada Nagaratnam* v. *Juvvada Seshayya*, (1939) 1 M.L.J. 272 (F.B.).

ent. The question that fell to be considered was whether the Madras Agriculturists' Relief Act (IV of 1938) providing for the scaling down of debts and interest was *ultra vires* of the powers of the Madras Provincial Legislature as being repugnant to the provisions of the Negotiable Instruments Act, 1881, the Usurious Loans Act, 1918 and the provisions of Hindu Law imposing a pious obligation on the part of a Hindu son to discharge his father's debts lawfully contracted and the liability of a member of a joint family to pay the debt contracted by the manager from out of his share of the family properties. The Federal Legislature is given exclusive power to legislate on 'cheques, bills of exchange, promissory notes, etc.,' under para. 28 of the Federal Legislative list while the Provincial Legislature is given exclusive power to legislate in regard to 'Agriculture' under para. 20, 'land' under para. 21 and 'money-lending and money-lenders' under para. 27 of the provincial list while para. 10 of the concurrent list deals with contracts other than those relating to 'agricultural land'. The contention advanced was that the Madras Act cuts down the payment of the full amount otherwise payable under a pronote and was accordingly beyond the powers of a Provincial Legislature. In holding the Act to be *intra vires* their Lordships held that the Madras Act was in effect designed for the relief of Agricultural indebtedness and came clearly within the spheres of 'agriculture' and 'money-lending', subjects exclusively reserved for the Provincial Legislature and that the power to deal with money-lending carries with it a power to limit the amount to be recovered by the money-lender and that the Act in no way effects the negotiation of a negotiable instrument or the liability of the maker or the endorser but only reduces

the liability in a case where the maker or the endorser is an 'agriculturist' and it could not be the intention of Parliament in conferring on the Federal Legislature a general power to legislate on negotiable instruments to cut down the power of the Provincial Legislature to deal with subjects within its exclusive control. The Madras Agriculturists' Relief Act was in substance within the powers of the Madras Legislature and the likelihood of its operating to reduce the liability on contracts such as negotiable instruments cannot affect its validity. The conclusion of their Lordships was supported on other grounds also. The indebtedness of agriculturists could be considered as falling within the subject of 'contracts' in the concurrent list so as to attract the operation of S. 107 of the Government of India Act and as the Act was reserved for the consideration of the Governor-General under S. 107 (2) and received his assent it was valid unless and until the Federal Legislature thought fit to legislate on the matter further after securing the previous sanction of the Governor-General. The arguments based on the Usurious Loans Act and Hindu Law were dismissed on the same ground. In a Lahore case it was held that a mere misdescription of the defendant as the 'Secretary of State for India in Council' when he ought to be described merely as 'Secretary of State' under the 1935 Act was not fatal to the maintainability of the suit and the same could be amended at any time.[6] In a recent Full Bench case of the Bombay High Court which dealt with the legality of the levy of the urban immovable property tax on properties in Bombay the

(6) *Mt. Amar Kaur* v. *Secretary of State*, 1939 L. 583 at 585.

objection taken by the Province of Bombay, the defendant in the case to the jurisdiction of the High Court of Bombay by reason of S. 226 of the Government of India Act, 1935, was overruled on the ground that before the section could apply it was necessary to determine that the tax challenged was legal and that to refuse jurisdiction to try the question would involve the dismissal of the suit without hearing a party. The learned Chief Justice, however, having found the Act levying the tax to be *intra vires* of the Provincial Legislature of Bombay held that the further question whether the tax could be raised by the municipal authorities in the manner provided in the Act was a matter concerning revenue and the jurisdiction of the Court to determine the question was barred by S. 226 of the Government of India Act, 1935.[7]

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(7) *Sir Byramjee Jeejeebhoy* v. *Province of Bombay and others*, 1940 Bom. 65 (F.B.). Certificate under S. 205 of the Government of India Act was granted in this case and the matter is under appeal to the Federal Court of India.

APPENDIX A.

INTERPRETATION ACT, 1889.

(52 and 53 Vict., c. 63).[1]

SECTIONS.

Re-enactment of existing Rules.

1. Rules as to gender and number.
2. Application of penal Acts to bodies corporate.
3. Meanings of "month," "land", and "oath" in Acts since 1850.
4-7. Meanings in past Acts of "county," "parish," "county court," "sheriff clerk," etc.
8. Sections to be substantive enactments.
9. Acts to be public Acts.
10. Amendment or repeal of Acts in same session.
11. Repeal in Acts passed since 1850, of repealing enactments not to revive enactments repealed.

New General Rules of Construction.

12. Definition of "Lord Chancellor," and other official definitions in past and future Acts.
13. Meaning of "High Court," "Summary Jurisdiction Acts," etc., and other judicial definitions in past and future Acts.
14. Meaning of "rules of Court".
15. Meaning of "borough".
16. Meaning of "guardians" and "union".
17. Definitions of "parliamentary election," "local government register of electors," etc.
18. Geographical and colonial definitions in future Acts.
19-22. Meaning of "person" and "financial year" in future Acts, and of "writing and statutory declaration" in past and future Acts.
23. Definition of Lands Clauses Acts.
24-27. Meaning of "Irish Valuation Acts," "ordinance map," "service by post," and committed for trial.
28. Meanings of "sheriff" "felony," and "misdemeanour," in future Scottish Acts.
29. Meaning of "county court in future Irish Acts.
30. References to the Crown.
31. Construction of Orders in Council, rules, bye-laws, etc.
32. Construction of provisions as to exercise of powers and duties.
33. Offences under two or more laws.
34. Measurement of distances.
35. Citation of Acts.
36. Meaning of "commencement" of Act.

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(1) Applied (except S. 5) to Church Assembly measures. *See* Interpretation Measure, 1925 (No. 1), S. 1.

SECTIONS.

37. Exercise of statutory powers between passing and commencement of Act.
38. Effect of repeal in future Acts.

Supplemental.

39. Definitions of "Act" in this Act.
40. Saving for past Acts.
41. Repeal of Acts.
42. Commencement of this Act on January 1, 1890.
43. Short title.

[30*th August*, 1889.

52 and 53 Vict., c. 63. An act for consolidating enactments relating to the Construction of Acts of Parliament and for further shortening the Language used in Acts of Parliament.

Be it enacted as follows:

Re-enactment of existing Rules.

Rules as to gender and number.

1. (1) In this Act and in every Act passed after the year one thousand eight hundred and fifty (2), whether before or after the commencement of this Act, unless the contrary intention appears,—

(*a*) words importing the masculine gender shall include females; and

(*b*) words in the singular shall include the plural, and words in the plural shall include the singular.

(2) The same rules shall be observed in the construction of every enactment relating to an offence punishable on indictment or on summary conviction, when the enactment is contained in an Act passed in or before the year one thousand eight hundred and fifty.

Application of penal Acts to bodies corporate.

2. (1) In the construction of every enactment relating to an offence punishable on indictment or on summary conviction, whether contained in an Act passed before or after the commencement of this Act, the expression "person" shall, unless the contrary intention appears, include a body corporate.

(2) Where under any Act, whether passed before or after the commencement of this Act, any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where that body is the party aggrieved.

Meanings of "month," "land."

3. In every Act passed after the year one thousand eight hundred and fifty[2], whether before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them; namely,—

The expression "month" shall mean calendar month;

The expression "land" shall include messuages, tenements, and hereditaments, houses, and buildings of any tenure;

"Oath."

The expressions "oath" and "affidavit" shall, in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration, and the expression "swear" shall, in the like case, include, affirm and declare.

"County".

4. In every Act passed after the year one thousand eight hundred and fifty[2] and before the commencement of this Act the expression "county" shall, unless the contrary intention appears, be construed as including a county of a city and a county of a town.

"Parish."

5. In every Act passed after the year one thousand eight hundred and sixty-six,[3] whether before or after the commencement of this Act, the expression "parish" shall, unless the contrary intention appears, mean, as respects England and Wales, a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed.[4]

Meaning of "county court."

6. In this Act, and in every Act and order of council passed or made after the year one thousand eight hundred and fory-six,[5] whether before or after the commencement of this Act, the expression "county court" shall, unless the contrary intention appears, mean as respects England and Wales a Court under the County Courts Act, 1888.

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(2) 1850 is the date of 13 Vict., c. 21, Lord Brougham's Act, repealed by S. 41 of this Act, and re-enacted by other sections.

(3) 1866 is the date of the Poor Law Amendment Act, 1866, of which part of S. 18, defining "parish" as in this section, is repealed by this Act.

(4) Repealed (except London) by Rating and Valuation Act, 1925 (c. 90), Ss. 69, 70, Sch. 8.

(5) 1846 is the date of the passing of the first County Courts Act (c. 95).

Meaning of "sheriff clerk," etc., in Scotch Acts.

7. In every Act relating to Scotland, whether passed before or after the commencement of this Act, unless the contrary intention appears—

The expression "sheriff clerk" shall include steward clerk;

The expressions "shire," "sheriffdom," and "county" shall include any stewartry in Scotland.

Sections to be substantive enactments.

8. Every section of an Act shall have effect as a substantive enactment without introductory words.

Acts to be public Acts.

9. Every Act passed after the year one thousand eight hundred and fifty,[6] whether before or after the commencement of this Act, shall be a public Act and shall be judicially noticed as such, unless the contrary is expressly provided by the Act.

Repeal of Acts in same session.

10. Any Act may be altered, amended, or repealed in the same session of Parliament.

Repeal of repealing Acts no revivor.

11. (1) Where an Act passed after the year one thousand eight hundred and fifty,[6] whether before or after the commencement of this Act, repeals a repealing enactment, it shall not be construed as reviving any enactment previously repealed, unless words are added reviving that enactment.

(2) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals wholly or partially any former enactment and substitutes provisions for the enactment repealed, the repealed enactment shall remain in force until the substituted provisions come into operation.

New General Rules of Constitute.

Official definitions in past and future Acts.

12. In this Act, and in every other Act whether passed before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

(6) *See* note (2), *supra*.

"Lord Chancellor."

(1) The expression "the Lord Chancellor" shall, except when used with reference to Ireland only, mean the Lord High Chancellor of Great Britain for the time being, and when used with reference to Ireland only, shall mean the Lord Chancellor of Ireland for the time being.

"Treasury."

(2) The expression "the Treasury" shall mean the Lord High Treasurer for the time being or the Commissioners for the time being of Her Majesty's Treasury.

"Secretary of State."

(3) The expression "Secretary of State" shall mean one of Her Majesty's Principal Secretaries of State for the time being.

"Admiralty."

(4) The expression "the Admiralty" shall mean the Lord High Admiral of the United Kingdom for the time being or the Commissioners for the time being for executing the office of Lord High Admiral of the United Kingdom.

"Privy Council."

(5) The expression "the Privy Council" shall, except when used with reference to Ireland only, mean the Lords and others for the time being of Her Majesty's Most Honourable Privy Council, and when used with reference to Ireland only, shall mean the Privy Council of Ireland for the time being.

"Education Department."

(6) The expression "the Education Department" shall mean the Lords of the Committee for the time being of the Privy Council appointed for Education.[7]

"Scottish Education Department."

(7) The expression "the Scottish Education Department" shall mean the Lords of the Committee for the time being of the Privy Council appointed for Education in Scotland.[8]

"Board of Trade."

(8) The expression "the Board of Trade" shall mean the Lords of the Committee for the time being of the Privy Council appointed for the consideration of matters relating to trade and foreign plantations.

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(7) By the Board of Education Act, 1899, (c. 33), S. 2, sub-S. (1), the Board of Education takes the place of the previously existing Education Department. The provisions of sub-S. (6) are, therefore, rendered nugatory.

(8) *See* Education (Scotland) Act, 1918, (c. 48), S. 30.

"Lord Lieutenant."

(9) The expression "Lord Lieutenant," when used with reference to Ireland, shall mean the Lord Lieutenant of Ireland or other Chief Governors or Governor of Ireland for the time being.

"Chief Secretary.

(10) The expression "Chief Secretary," when used with reference to Ireland, shall mean the Chief Secretary to the Lord Lieutenant for the time being.

"Postmaster - General."

(11) The expression "Postmaster-General" shall mean Her Majesty's Postmaster-General for the time being.

"Commissioners of Woods and Forests."

(12) The expression "Commissioners of Woods" or "Commissioners of Woods and Forests" shall mean the Commissioners of Her Majesty's Woods, Forests, and Land Revenues for the time being.[9]

"Commissioners of Works."

(13) The expression "Commissioners of Works" shall mean the Commissioners of Her Majesty's works and Public Buildings for the time being.

"Charity Commissioners."

(14) The expression "Charity Commissioners" shall mean the Charity Commissioners for England and Wales for the time being.

"Ecclesiastical Commissioners."

(15) The expression "Ecclesiastical Commissioners" shall mean the Ecclesiastical Commissioners for England for the time being.

"Queen Anne's Bounty."

(16) The expression "Queen Anne's Bounty" shall mean the Governors of the Bounty of Queen Anne for the augmentation of the maintenance of the poor clergy.

"National Debt Commissioners."

(17) The expression "National Debt Commissioners" shall mean the Commissioners for the time being for the reduction of the National Debt.

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(9) Now the Commissioners for Crown Lands; *see* Forestry (Transfer of Woods) Act, 1923 (c. 21), S. 4; and Crown Lands Act, 1927 (c. 23), S. 1.

(18) The expression "the Bank of England" shall mean, as circumstances require, the Governor and Company of the Bank of England or the bank of the Governor and Company of the Bank of England.

"Bank of England."

(19) The expression "the Bank of Ireland" shall mean, as circumstances require, the Governor and Company of the Bank of Ireland, or the bank of the Governor and Company of the Bank of Ireland.

"Bank of Ireland."

(20) The expression "consular officer" shall include consul-general, consul, vice-consul, consular agent, and any person for the time authorised to discharge the duties of consul-general, consul, or vice-consul.

"Consular officer."

13. In this Act and in every other Act whether passed before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meaning hereby respectively assigned to them, namely :—

Judicial definitions in past and future Acts.

(1) The expression "Supreme Court," when used with reference to England or Ireland,[10] shall mean the Supreme Court of Judicature in England or Ireland, as the case may be, or either branch thereof.

"Supreme Court."

(2) The expression "Court of Appeal," when used with reference to England or Ireland,[10] shall mean Her Majesty's Court of Appeal in England or Ireland, as the case may be.

"Court of Appeal."

(3) The expression "High Court," when used with reference to England or Ireland,[10] shall mean Her Majesty's High Court of Justice in England or Ireland, as the case may be.

"High Court."

(4) The expression "Court of assize" shall, as respects England, Wales, and Ireland, mean a Court of assize, a Court of oyer and terminer, and a Court of gaol delivery, or any of them, and shall, as respects England and Wales, include the Central Criminal Court.

"Court of assize."

(5) The expression "assizes," as respects England, Wales and Ireland, shall mean the Courts of Assize usually held in every year, and

"Assizes."

(10) *See* Government of Ireland Act, 1920 (c. 67), Ss. 38-42.

shall include the Sessions of the Central Criminal Court, but shall not include any Court of assize held by virtue of any special commission, or, as respects Ireland, any Court held by virtue of the powers conferred by section sixty-three of the Supreme Court of Judicature Act (Ireland), 1877.

"Summary Jurisdiction Act, 1848."

(6) The expression "the Summary Jurisdiction Act, 1848," shall mean the Act of the session of the eleventh and twelfth years of the reign of her present majesty, chapter forty-three, instituted. "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders".[11]

"Summary Jurisdiction (England) Acts," etc.

(7) The expression "the Summary Jurisdiction (England) Acts" and the expression "the Summary Jurisdiction (English) Acts" shall respectively mean the Summary Jurisdiction Act, 1848, and the Summary Jurisdiction Act, 1879, and any Act, past or future, amending those Acts or either of them.

(8) The expression "the Summary Jurisdiction (Scotland) Acts" shall mean the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Act, past or future, amending those Acts or either of them.[12]

(9) The expression "the Summary Jurisdiction (Ireland) Acts" shall mean, as respects the Dublin Metropolitan Police District, the Acts regulating the powers and duties of justices of the peace or of the police of that district, and as respects any other part of Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act, past or future, amending the same.

(10) The expression "the Summary Jurisdiction Acts" when used in relation to England or Wales shall mean the Summary Jurisdiction (England) Acts, and when used in relation to Scotland the Summary Jurisdiction (Scotland) Acts, and when used in relation to Ireland the Summary Jurisdiction (Ireland) Acts.

"Court of summary jurisdiction."

(11) The expression "Court of Summary Jurisdiction" shall mean any justice or justices of the peace, or other Magistrate, by whatever name called, to whom jurisdiction is given by or who is authorised to act under, the Summary Jurisdiction

(11) Commonly called "Jervis's Act."

(12) *See* now Summary Jurisdiction (Scotland) Act, 1908 (c. 65).

Acts, whether in England, Wales, or Ireland and whether acting under the Summary Jurisdiction Acts or any of them or under any other Act, or by virtue of his commission, or under the common law.

"Petty sessional court."

(12) The expression "petty sessional court" shall, as respects England or Wales, mean a court of summary jurisdiction consisting of two or more justices when sitting in a petty sessional court-house, and shall include the Lord Mayor of the City of London, and any alderman of that city, and any metropolitan or borough police magistrate or other stipendiary magistrate when sitting in a court-house or place at which he is authorised by law to do alone any act authorised to be done by more than one justice of the peace.

"Petty sessional court-house."

(13) The expression "petty sessional court-house" shall, as respects England or Wales, mean a court-house or other place at which justices are accustomed to assemble for holding special or petty sessions, or which is for the time being appointed as a substitute for such a court-house or place, and where the justices are accustomed to assemble for either special or petty sessions at more than one court-house or place in a petty sessional division, shall mean any such court-house or place. The expression shall also include any court-house or place at which the Lord Mayor of the city of London or any alderman of that city, or any metropolitan or borough police magistrate or other stipendiary magistrate is authorised by law to do alone any act authorised to be done by more than one justice of the peace.

"Court of quarter sessions."

(14) The expression "court of quarter sessions" shall mean the justices of any county, riding, parts, division, or liberty of a county, or of any county of a city, or county of a town, in general or quarter sessions assembled, and shall include the court of the recorder of a municipal borough having a separate court of quarter sessions.

Meaning of "rules of court."

14. In every Act passed after the commencement of this Act, unless the contrary intention appears, the expression "rules of court" when used in relation to any court shall mean rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of such court, and as regards Scotland shall include acts of adjournal and acts of sederunt.

The power of the said authority to make rules of court as above defined shall include a power to make rules of court for the purpose of any Act passed after the commencement of this Act, and directing or authorising anything to be done by rules of court.

Meaning of "borough."

15. In this Act and in every Act passed after the commencement of this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

"Municipal borough."

(1) The expression "municipal borough" shall mean, as respects England and Wales, any place for the time being subject to the Municipal Corporations Act, 1882, and any reference to the mayor, aldermen, and burgesses of a borough shall include a reference to the mayor, aldermen, and citizens of a city, and any reference to the powers, duties, liabilities or property of the council of a borough shall be construed as a reference to the powers, duties, liabilities, or property of the mayor, aldermen, and burgesses of the borough acting by the council.

(2) The expression "municipal borough" shall mean, as respects Ireland, any place for the time being subject to the Act of the session of the third and fourth years of the reign of her present Majesty, chapter one hundred and eight, intituled "An Act for the regulation of municipal corporations in Ireland."

"Parliamentary borough."

(3) The expression "parliamentary borough" shall mean any borough, burgh, place or combination of places returning a member or members to serve in Parliament, and not being either a county or division of a county, or a university, or a combination of universities.

"Borough."

(4) The expression "borough" when used in relation to local government shall mean a municipal borough as above defined, and when used in relation to parliamentary elections or the registration of parliamentary electors shall mean a parliamentary borough as above defined.

Meaning of "guardians and union."

16. In this Act and in every Act passed after the commencement of this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

(1) The expression "board of guardians" shall, as respects England and Wales, mean a board of guardians elected under the Poor Law Amendment Act, 1834, and the Acts amending the same, and shall include a board of guardians or other body of persons performing under any local Act the like functions to a board of guardians under the Poor Law Amendment Act, 1834.

"Poor law union."

(2) The expression "poor law union" shall, as respects England and Wales, mean any parish or union of parishes for which there is a separate board of guardians.

(3) The expression "board of guardians" shall, as respects Ireland, mean a board of guardians elected under the Act of the Session of the first and second years of the reign of her present majesty, chapter fifty-six, intituled "An Act for the more effectual relief of the destitute poor in Ireland," and the Acts amending the same, and shall include any body of persons appointed by the local government Board for Ireland to carry into execution the provisions of those Acts.

(4) The expression "poor law union" shall, as respects Ireland, mean any townland or place or union, or townlands or places, for which there is a separate board of guardians.

Definitions relating to elections.

17. In every Act passed after the commencement of this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely :—

(1) The expression "parliamentary election" shall mean the election of a member or members to serve in Parliament for a county or division of a county, or parliamentary borough or division of a parliamentary borough, or for a university or combination of universities.

(2) The expression "parliamentary register of electors" shall mean a register of persons entitled to vote at any parliamentary election.

(3) The expression "local government register of electors" shall mean as respects an administrative county in England or Walles other than a county borough, the county register, and as respects a county borough or other municipal borough, the burgess roll.

Geographical and colonial definitions in future Acts.

18. In this Act, and in every Act passed after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

"British Islands."

(1) The expression "British Islands" shall mean the United Kingdom, the Channel Islands, and the Isle of Man.

"British Possession."

(2) The expression "British possession" shall mean any part of Her Majesty's dominions exclusive of the United Kingdom, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession.

"Colony."

(3) The expression "colony" shall mean any part of Her Majesty's dominions exclusive of the British Islands, and of British India, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony.

"British India."

(4) The expression "British India" shall mean all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor-General of India or through any governor or other officer subordinate to the Governor-General of India.

"India."

(5) The expression "India" shall mean British India together with any territories of any native prince or chief under the suzerainty of Her Majesty exercised through the Governor-General of India, or through any governor or other officers subordinate to the Governor-General of India.

"Governor."

(6) The expression "Governor" shall, as respects Canada and India, mean the Governor-General, and include any person who for the time being has the powers of the Governor-General, and as respects any other British possession, shall include the officer for the time being administering the Government of that possession.

"Colonial legislature."

(7) The expression "colonial legislature" and the expression "legislature", when used with reference to a British possession, shall

respectively mean the authority, other than the Imperial Parliament or Her Majesty the Queen in Council, competent to make laws for a British possession.

Meaning of "person" in future Acts.

19. In this Act and in every Act passed after the commencement of this Act the expression "person" shall, unless the contrary intention appears, include anybody of persons corporate or unincorporate.

Meaning of "writing" in past and future Acts.

20. In this Act and in every other Act whether passed before or after the commencement of this Act expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

"Statutory declaration."

21. In this Act, and in every other Act, whether passed before or after the commencement of this Act, the expression "statutory declaration" shall, unless the contrary intention appears, mean a declaration made by virtue of the Statutory Declarations Act, 1835 (c. 62).

"Financial year."

22. In this Act and in every Act passed after the commencement of this Act the expression "financial year" shall, unless the contrary intention appears, mean as respects any matters relating to the Consolidated Fund or moneys provided by Parliament, or to the Exchequer, or to Imperial taxes or finance, the twelve months ending the thirty-first day of March.

Definition of "Lands Clauses Acts."

23. In any Act passed after the commencement of this Act, unless the contrary intention appears,—

The expression "Lands Clauses Acts" shall mean—

(*a*) as respects England and Wales, the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Acts Amendment Act, 1860, the Lands Clauses Consolidation Act, 1869, and the Lands Clauses (Umpire) Act, 1883, and any Acts for the time being in force amending the same; and

(*b*) as respects Scotland, the Lands Clauses Consolidation (Scotland) Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, and any Acts for the time being in force amending the same; and

(*c*) as respects Ireland, the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Acts Amendment Act, 1860, the Railways Act (Ireland), 1851, the Railways Act (Ireland), 1860, the Railways Act (Ireland), 1864, and the Railways Traverse Act, and any Acts for the time being in force amending the same.

Meaning of "Irish Valuation Acts."

24. In any Act passed before or after the commencement of this Act the expression "Irish Valuation Acts" shall mean the Acts relating to the valuation of rateable property in Ireland.

Meaning of "Ordnance map."

25. In this Act and in every other Act, whether passed before or after the commencement of this Act, the expression "ordnance map" shall, unless the contrary intention appears, mean a map made under the powers conferred by the Survey (Great Britain) Acts, 1841 to 1870 or by the Survey (Ireland) Acts, 1825 to 1870, and the Acts amending the same respectively.

Meaning of "service by post."

26. Where an Act, passed after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve," or the expression "give" or "send," or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Meaning of "committed for trial."

27. In every Act, passed after the commencement of this Act, the expression "committed for trial" used in relation to any person shall, unless the contrary intention appears, mean, as respects England and Wales, committed to prison with the view of being tried before a judge and jury, whether the person is committed in pursuance of section twenty-two or of section twenty-five of the Indictable Offences Act, 1848, or is committed by a court, judge, coroner, or other authority having power to commit a person to any prison with a view to his trial, and shall include a person who is admitted to bail upon a recognisance to appear and take his trial before a judge and jury.

Meanings of "sheriff", "felony," and "misdemeanour" in future Scotch Acts.

28. In this Act and in every Act passed after the commencement of this Act, unless the contrary intention appears—

The expression "sheriff" shall, as respects Scotland, include a sheriff substitute:

The expression "felony" shall, as respects Scotland, mean a high crime and offence:

The expression "misdemeanour" shall, as respects Scotland, mean an offence.

Meaning of "county court" in future Irish Acts.

29. In every Act passed after the commencement of this Act, unless the contrary intention appears, the expression "county court" shall, as respects Ireland, mean a civil bill court within the meaning of the County Officers and Courts (Ireland) Act, 1877.

References to the Crown.

30. In this Act and in every other Act, whether passed before or after the commencement of this Act, references to the sovereign reigning at the time of the passing of the Act or to the Crown shall, unless the contrary intention appears, be construed as references to the sovereign for the time being, and this Act shall be binding on the Crown.

Construction of statutory rules, etc.

31. Where any Act, whether passed before or after the commencement of this Act, confers power to make, grant, or issue any instrument, that is to say, any order in Council, order, warrant, scheme, letters patent, rules, regulations, or bye-laws, expressions used in the instrument, if it is made after the commencement of this Act, shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power.

Construction of provisions as to exercise of powers and duties.

32. (1) Where an Act passed after the commencement of this Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2) Where an Act passed after the commencement of this Act confers a power or imposes a duty on the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

Bye-laws.

(3) Where an Act passed after the commencement of this Act confers a power to make any rules, regulations, or bye-laws, the power shall, unless the contrary intention appears, be construed as including a power, exerciseable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or bye-laws.

Provisions as to offences under two or more laws.

33. Where an Act, or omission constitutes an offence under two or more Acts, or both under an Act and at common law, whether any such Act was passed before or after the commencement of this Act, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence.

Measurement of distances.

34. In the measurement of any distance for the purposes of any Act passed after the commencement of this Act, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane.

Citation of Acts.

35. (1) In any Act, instrument, or document, an Act, may be cited by reference to the short title, if any, of the Act, either with or without a reference to the chapter, or by reference to the regnal year in which the Act was passed, and where there are more statutes or sessions than one in the same regnal year, by reference to the statute or the session, as the case may require, and where there are more chapters than one, by reference to the chapter, and any enactment may be cited by reference to the section or sub-section of the Act in which the enactment is contained.

(2) Where any Act, passed after the commencement of this Act contains such reference as aforesaid, the reference shall, unless a contrary intention appears, be read as referring, in the case of statutes included in any revised edition of the statutes purporting to be printed by authority, to that edition, and in the case of statutes not so included, and passed before the reign of King George the first, to the edition prepared under the direction of the record commission, and in other cases to the copies of the statutes purporting to be printed by the Queen's printer, or under the Superintendence or authority of Her Majesty's stationery office.

The expression "sheriff" shall, as respects Scotland, include a sheriff substitute:

The expression "felony" shall, as respects Scotland, mean a high crime and offence:

The expression "misdemeanour" shall, as respects Scotland, mean an offence.

Meaning of "county court" in future Irish Acts.

29. In every Act passed after the commencement of this Act, unless the contrary intention appears, the expression "county court" shall, as respects Ireland, mean a civil bill court within the meaning of the County Officers and Courts (Ireland) Act, 1877.

References to the Crown.

30. In this Act and in every other Act, whether passed before or after the commencement of this Act, references to the sovereign reigning at the time of the passing of the Act or to the Crown shall, unless the contrary intention appears, be construed as references to the sovereign for the time being, and this Act shall be binding on the Crown.

Construction of statutory rules, etc.

31. Where any Act, whether passed before or after the commencement of this Act, confers power to make, grant, or issue any instrument, that is to say, any order in Council, order, warrant, scheme, letters patent, rules, regulations, or bye-laws, expressions used in the instrument, if it is made after the commencement of this Act, shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power.

Construction of provisions as to exercise of powers and duties.

32. (1) Where an Act passed after the commencement of this Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2) Where an Act passed after the commencement of this Act confers a power or imposes a duty on the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

Bye-laws.

(3) Where an Act passed after the commencement of this Act confers a power to make any rules, regulations, or bye-laws, the power shall, unless the contrary intention appears, be construed as including a power, exerciseable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or bye-laws.

Provisions as to offences under two or more laws.

33. Where an Act, or omission constitutes an offence under two or more Acts, or both under an Act and at common law, whether any such Act was passed before or after the commencement of this Act, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence.

Measurement of distances.

34. In the measurement of any distance for the purposes of any Act passed after the commencement of this Act, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane.

Citation of Acts.

35. (1) In any Act, instrument, or document, an Act, may be cited by reference to the short title, if any, of the Act, either with or without a reference to the chapter, or by reference to the regnal year in which the Act was passed, and where there are more statutes or sessions than one in the same regnal year, by reference to the statute or the session, as the case may require, and where there are more chapters than one, by reference to the chapter, and any enactment may be cited by reference to the section or sub-section of the Act in which the enactment is contained.

(2) Where any Act, passed after the commencement of this Act contains such reference as aforesaid, the reference shall, unless a contrary intention appears, be read as referring, in the case of statutes included in any revised edition of the statutes purporting to be printed by authority, to that edition, and in the case of statutes not so included, and passed before the reign of King George the first, to the edition prepared under the direction of the record commission, and in other cases to the copies of the statutes purporting to be printed by the Queen's printer, or under the Superintendence or authority of Her Majesty's stationery office.

(3) In any Act passed after the commencement of this Act a description or citation of a portion of another Act shall, unless the contrary intention appears, be construed as including the word, section, or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

Meaning of "commencement."

36. (1) In this Act, and in every Act passed either before or after the commencement of this Act, the expression "commencement," when used with reference to an Act, shall mean the time at which the Act comes into operation.

(2) Where an Act passed after the commencement of this Act, or any order in Council, order, warrant, scheme, letters patent, rules, regulations, or bye-laws made, granted, or issued, under a power conferred by any such Act, is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day.

Exercise of statutory powers between passing and commencement of Act.

37. Where an Act, passed after the commencement of this Act, is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any order in Council, order, warrant, scheme, letters patent, rules, regulations, or bye-laws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation.

Effect of repeal in future Acts.

38. (1) Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

(2) Where this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

(*a*) revive anything not in force or existing at the time at which the repeal takes effect; or

(*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

(*c*) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or

(*d*) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or

(*e*) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed.

Supplemental.

Definition of "Act."

39. In this Act, the expression "Act" shall include a local and personal Act, and a private Act.

Saving for past Acts.

40. The provisions of this Act respecting the construction of Acts passed after the commencement of this Act shall not affect the construction of any Act, passed before the commencement of this Act, although it is continued or amended by an Act passed after such commencement.

Repeal.

41. [Repealed S.L.R. 1908.]

Commencement of Act.

42. This Act shall come into operation on the first day of January one thousand eight hundred and ninety.

Short title.

43. This Act, may be cited as the Interpretation Act, 1889.

Schedule. [Repealed S.L.R., 1908.]

APPENDIX B.

THE GENERAL CLAUSES ACT (X OF 1897).

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THE GENERAL CLAUSES ACT (X OF 1897)[1].

N.B.—Throughout the Act, for "Acts of the Governor-General in Council" and "Act of the Governor-General in Council" the words "Central Acts" and "Central Act" have been substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

[11*th March*, 1897.

An Act to consolidate and extend the General Clauses Acts, 1868 and 1887.

WHEREAS it is expedient to consolidate and extend the General Clauses Acts, 1868 and 1887; It is hereby enacted as follows:—

Preliminary.

Short title and commencement.

1. (1) This Act may be called THE GENERAL CLAUSES ACT, 1897; [2][* *].

(2) [2][* * * *]

2. [*Repeal*] *Rep. by the Repealing and Amending Act (I of 1903).*

General Definitions.

Definitions.

3. In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context—

"Abet".

(1) "abet" with its grammatical variations and cognate expressions shall have the same meaning as in the Indian Penal Code:

"Act".

(2) "act" used with reference to an offence or a civil wrong shall include a series of acts, and words which refer to acts done extend also to illegal omissions:

"Affidavit."

(3) "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare: instead of swearing:

[3][(3-*a*) "Assam Act" shall mean an Act made by the Chief Commissioner of Assam in Council under the Indian Councils

(1) For Statement of Objects and Reasons, *see* Gazette of India, 1897, Pt. V, p. 38; for Report of Sel. Com., *see* (*ibid.*), p. 77; for Proceedings in Council, see *ibid.*, Part VI, pp. 35, 40, 56 and 76.

(2) Rep. by Act X of 1914, Sch. II.

(3) Inserted by Act X of 1914.

Act, 1861 to 1909] [4][or the Government of India Act, 1915] [5][or by the local Legislature or the Governor of Assam under the Government of India Act] [6][or by the Provincial Legislature or the Governor of Assam under the Government of India Act, 1935] :

"Barrister." (4) "barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland;

"Bengal Act." [6-a][(5) "Bengal Act" shall mean in the cases of Acts passed prior to the 1st April, 1912, an Act made by the Lieutenant-Governor of Bengal in Council under the Indian Councils Act, 1861, or the Indian Councils Acts, 1861 and 1892, or the Indian Councils Acts, 1861 to 1909, and in the case of Acts passed after that date, an Act made by the Governor of the Presidency of Fort William in Bengal in Council under the Indian Councils Acts, 1861 to 1909] [4][or the Government of India Act, 1915] [6][or by the local Legislature or the Governor of the Presidency of Bengal under the Government of India Act] [4][or by the local Legislature or the Government of India Act] [6][or by the Provincial Legislature or the Governor of Bengal under the Government of India Act, 1935] :

[7][(5-a) 'Berar' shall have the same meaning as in the Government of India Act, 1935] :

(5-b) "Bihar and Orissa Act" shall mean an Act made by the Lieutenant-Governor of Bihar and Orissa in Council under the Indian Councils Act, 1861 to 1909 [4][or the Government of India Act, 1915] [5][or by the local Legislature or the Governor of Bihar and Orissa [6][or Behar] under the Government of India Act] ;

[7][(5-c) 'Bihar Act' shall mean an Act made by the Provincial Legislature or the Governor of Bihar under the Government of India Act, 1935] :

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(4) In Cls. (3-*a*), (5), (5-*a*), (6) (8-*a*), (8-*b*), (30), (44-*a*), (46), ((55-*a*), of S. 3, the last clause has been added by Act XVIII of 1928.

(5) Added by Act XXIV of 1917.

(6) Inserted by the Government of India (Adaptation of Indian Laws) Order, 1937.

(6-*a*) Inserted by Act X of 1914.

(7) Cl. (5-*a*) and (5-*c*) added by Government of India (Adaptation of Indan Laws) Order, 1937.

(6) "Bombay Act" shall mean an Act made by the Governor of Bombay in Council under [8][the Indian Councils Act, 1861 or] the Indian Councils Acts, 1861 and 1892 [9][or the Indian Councils Acts, 1861 to 1909] [10][or the Government of India Act, 1915] [11][or by the local Legislature or the Governor of the Presidency of Bombay under the Government of India Act] [12][or by the Provincial Legislature or the Governor of Bombay under the Government of India Act, 1935] :

"Bombay Act."

[13][(7) 'British India' shall mean, as respects the period before the commencement of Part III of the Government of India Act, 1935, all territories and places within His Majesty's dominions which were for the time being governed by His Majesty through the Governor-General of India or through any Governor or officer subordinate to the Governor-General of India, and as respects any period after that date means all territories for the time being comprised within the Governors' Provinces and the Chief Commissioners' Provinces, except that a reference to British India in an Indian law passed or made before the commencement of Part III of the Government of India Act, 1935, shall not include a reference to Berar] :

(8) "British possession" shall mean any part of Her Majesty's dominions, exclusive of the United Kingdom, and, where parts of those dominions are under both a central and a local Legislature, all parts under the central Legislature shall, for the purposes of this definition, be deemed to be one British possession :

"British possession."

[14][(8-*a*) 'Burma Act' shall mean an Act made by the Lieutenant-Governor of Burma in Council under the Indian Councils Acts, 1861 and 1892], [or the Indian Councils Acts, 1861 to 1909], [10][or the Government of India Act, 1915], [11][or by the local Legislature or the Governor of Burma under the Government of India Act].

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(8) Inserted by Act I of 1903.

(9) Inserted by Act X of 1914.

(10) Added by Act XXIV of 1917.

(11) Added by Act XVIII of 1923.

(12) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

(13) Substituted by *ibid.*,

(14) This clause was inserted by Act I of 1903.

[15][(8-*aa*) 'Central Act' shall mean an Act of the Central Legislature, and shall include, except in section 5, an Act made by the Governor-General under S. 67-B of the Government of India Act, or S. 44 of the Government of India Act, 1935;

(8-*ab*) 'Central Government' shall—

(*a*) in relation to anything done or to be done after the commencement of Part III of the Government of India Act, 1935, mean the Federal Government; and

(*b*) in relation to anything done before the commencement of Part III of the said Act, mean the Governor-General in Council, or the authority competent at the relevant date to exercise the functions corresponding to those subsequently exercised by the Governor-General in Council;

(8-*ac*) 'Central Legislature' shall mean the Governor-General in Council acting in a legislative capacity under the Government of India Act, 1833, the Government of India Act, 1853, the Indian Councils Acts, 1861 to 1909, or any of those Acts, or the Government of India Act, 1915, the Indian Legislature acting under the Government of India Act, or the Government of India Act, 1935, or the Federal Legislature acting under the Government of India Act, 1935, as the case may require.]

[16][(8*b*) "Central Provinces Act" shall mean an Act made by the Chief Commissioner of Central Provinces in Council under the Indian Councils Acts, 1861 to 1909], [17][or the Government of India Act, 1915], [18][or by the local Legislature or the Governor of the Central Provinces under the Government of India Act] :

[19][(8-*c*) 'Central Provinces and Berar Act' shall mean an Act made by the Provincial Legislature or the Governor of the Central Provinces and Berar under the Government of India Act, 1935] :

"Chapter." (9) "Chapter" shall mean a Chapter of the Act or Regulation in which the word occurs;

[19-a][(9-*a*) 'Chief Controlling Revenue Authority' or 'Chief Revenue Authority' shall mean—

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(15) Cls. (8-*aa*), 8-*ab*) and (8-*ac*), added by the Government of India (Adaptation of Indian Laws) Order, 1937.

(16) Added by Act XVII of 1914.

(17) Added by Act XXIV of 1917.

(18) Added by Act XVIII of 1928.

(19) Cl. (8-c.) added by Act XVII of 1914.

(19-a) Cl. (9-*a*) added by the Government of India (Adaptation of Indian Laws) Order, 1937.

(*a*) in provinces where there is a Board of Revenue, that Board;

(*b*) in provinces where there is a Revenue Commissioner, that Commissioner;

(*c*) in the Punjab, the Financial Commissioner; and

(*d*) elsewhere, such authority as, in relation to matters enumerated in List I in the Seventh Schedule to the Government of India Act, 1935, the Central Government, and in relation to other matters, the Provincial Government, may by notification in the Official Gazette appoint] :

"Collector." (10) 'Collector' shall mean, in a Presidency town, the Collector of Calcutta, Madras or Bombay as the case may be, and elsewhere the chief officer in charge of the revenue-administration of a district;

"Colony." (11) 'Colony' shall mean any part of Her Majesty's dominions, exclusive of the British Islands and of British India and, where parts of those dominions are under both a central and a local Legislature, all parts under the central Legislature shall for the purposes of this definition be deemed, to be one colony: [19-b][Provided that in any Central Act passed after the commencement of Part III of the Government of India Act, 1935, 'Colony' shall not include any Dominion as defined in the Statute of Westminster, 1931, any Province or State forming part of such a Dominion, or British Burma] :

"Commencement." (12) 'commencement', used with reference to an Act or Regulation shall mean the day on which the Act or Regulation comes into force;

"Commissioner." (13) "Commissioner" shall mean the chief officer in charge of the revenue-administration of a division;

"Consular officer." (14) 'consular officer' shall include consul-general, consul, vice-consul, consular agent, pro-consul and any person for the time being authorized to perform the duties of consul-general, consul, vice-consul or consular agent;

[20][(14-*a*) 'Crown contracts' and equivalent expressions shall include contracts made by or on behalf of the Secretary of State

(19-b) Proviso to Cl. (11) added by Government of India (Adaptation of Indian Laws) order, 1937.

(20) Cls. (14-*a*) to (14-*g*) added by *ibid.*

in Council, contracts made in the exercise of the executive authority of the Central or any Provincial Government, contracts made by the Federal Railway authority, and contracts made in connection with the exercise of the functions of the Crown in its relations with Indian States.

(14-*b*) 'Crown debts' and equivalent expressions shall include debts due to the Secretary of State in Council, the Secretary of State, the Central Government, any Provincial Government, the Federal Railway Authority or the Crown Representative.

(14-*c*) 'A grant' (including a transfer of land or of any interests therein or a payment of money) shall be deemed to be made by the Crown if it is made by or on behalf of His Majesty, the Secretary of State in Council, the Central Government, any Provincial Government, the Federal Railway Authority or the Crown Representative.

(14-*d*) 'Crown liabilities' and equivalent expressions shall include the liabilities of the Secretary of State in Council, the Secretary of State, the Central Government, any Provincial Government, the Federal Railway Authority or the Crown Representative.

(14-*e*) 'Crown property' and equivalent expressions shall include any property vested in His Majesty or otherwise held for the purposes of the Central or any Provincial Government, the Federal Railway authority or the Crown Representative.

(14-*f*) 'Crown representative' shall mean His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States.

(14-*g*) 'Crown revenues' and equivalent expressions shall include any revenues vesting in His Majesty.]

"District Judge."

(15) 'District Judge' shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;

"Document."

(16) 'document' shall include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, which is intended to be used, or which may be used, for the purpose of recording that matter;

[21][(16-*a*) "Eastern Bengal and Assam Act" shall mean an Act made by the Lieutenant-Governor of Eastern Bengal and Assam in Council under the Indian Councils Acts, 1861 and 1892, or the Indian Councils Acts, 1861 to 1909:]

"Eastern Bengal and Assam Act."

(17) 'enactment' shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras or Bombay Code and shall also include any provision contained in any Act or in any such Regulation as aforesaid:

"Enactment."

(18) 'father,' in the case of any one whose personal law permits adoption, shall include an adoptive father;

"Father."

[22][(18-*a*) 'Federal Government' shall

(*a*) in relation to anything done or to be done after the commencement of Part III of the Government of India Act, 1935, but before the establishment of the Federation, mean, as respects matters with respect to which the Governor-General is by and under the provisions of the said Act for the time being in force required to act in his discretion, the Governor-General, and as respects other matters, the Governor-General in Council; and

(*b*) in relation to anything done or to be done after the establishment of the Federation mean the Governor-General acting or not acting in his discretion, and exercising or not exercising his individual judgment, according to the provision in that behalf made by and under the said Act;

and shall include—

(i) in relation to functions entrusted under S. 124 (1) of the said Act to the Government of a Province, the Provincial Government acting within the scope of the authority given to it under that sub-section; and

(ii) in relation to the administration of a Chief Commissioner's province, the Chief Commissioner acting within the scope of the authority given to him under S. 94 (3) of the said Act:

(18-*b*) 'Federal Railway Authority' shall mean the Federal Railway Authority constituted by the Government of India Act, 1935, or, before the establishment of that Authority, the Central Government.]

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(21) Inserted by Act X of 1914.

(22) Cls. (18-*a*) and (18-*b*) added by Government of India (Adaptation of Indians Laws) Order, 1937.

"Financial year." (19) "financial year" shall mean the year commencing on the first day of April;

"Good faith." (20) a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not;

"Government." (21) "Government" or "the Government" shall include [23][both the Central Government and any Provincial Government;]

"Government securities. [24][(22) 'Government securities' shall mean securities of the Central or any Provincial Government and shall include sterling securities of the Secretary of State for India in Council or the Secretary of State.]

(23) [25][* * * *]

"High Court." (24) "High Court," used with reference to civil proceedings, shall mean the highest Civil Court of appeal [1][not including the Federal Court] in the part of British India in which the Act or Regulation containing the expression operates:

"Immovable property." (25) "immovable property" shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth:

"Imprisonment." (26) "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code.

"India". [2][(27) 'India' shall mean British India together with all territories of any Indian Ruler under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian

(23) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(24) Cl. (22) substituted by *ibid.*

(25) Repealed by Act XVIII of 1919.

(1) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

(2) Cl. (27) substituted for old Cl. (27) by Government of India (Adaptation of Indian Laws) Order, 1937.

Ruler, the tribal areas, and any other territories which His Majesty in Council may, from time to time after ascertaining the views of the Central Government and the Central Legislature, declare to be part of India:]

[3][(27-*a*) 'Indian law' shall include any law, ordinance, order, bye-law, rule or regulation passed or made at any time by any competent Legislature, authority, or person in British India:

(27-*b*) 'Indian State' shall include any territory, whether described as a State, an Estate, a Jagir or otherwise belonging to or under the suzerainty of a Ruler who is under the suzerainty of His Majesty, and not being part of British India:]

"Local authority."

(28) "local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund:

(29) [*Omitted by Government of India* (*Adaptation of Indian Laws*) *Order*, 1937].

"Madras Act."

(30) "Madras Act" shall mean an Act made by the Governor of Fort St. George in Council under [3-a][the Indian Councils Act, 1861, or] the Indian Councils Acts, 1861 and 1892, [3-b][or the Indian Councils Acts, 1861 to 1909,] [3-c][or the Government of India Act, 1915], [3-d][or by the local Legislature or the Governor of the Presidency of Madras under the Government of India Act,], [4][or by the Provincial Legislature or the Governor of Madras under the Government of India Act, 1935]:

"Magistrate."

(31) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force;

"Master" (of a ship).

(32) "master," used with reference to a ship, shall mean any person (except a pilot or harbour-master) having for the time being control or charge of the ship:

(3) Cls. (27-*a*) and (27-*b*) added by Government of India (Adaptation of Indian Laws) Order, 1937.

(3-a) Added by Act I of 1903.

(3-b) Added by Act X of 1914.

(3-c) Added by Act XXIV of 1917.

(3-d) Added by Act XVIII of 1928.

(4) Added by Government of India (Adaptation of Indian Laws) Order, 1937.

"Month." (33) "month" shall mean a month reckoned according to the British calendar:

"Movable property." (34) "movable property" shall mean property of every description, except immovable property:

[5][(34-*a*) 'North-West Frontier Province Act' shall mean an Act made by the local Legislature or the Governor of the North-West Frontier Province under the Government of India Act, or by the Provincial Legislature or the Governor of the North-West Frontier Province under the Government of India Act, 1935.]

"North - Western Provinces and Oudh Act." (35) "North-Western Provinces and Oudh Act" shall mean an Act made by the Lieutenant-Governor of the North-Western Provinces and Oudh in Council under [6][the Indian Councils Act, 1861, or][6] the Indian Councils Acts, 1861 and 1892;

"Oath." (36) "oath" shall include affirmation and declaration, in the case of persons by law allowed to affirm or declare instead of swearing;

"Offence." (37) "offence" shall mean any act or omission made punishable by any law for the time being in force;

[7][37-*a*) 'Official Gazette' or 'Gazette' shall mean the *Gazette of India*, or, as the case may be, the official gazette of a province;

(37-*b*) 'Orissa Act' shall mean an Act made by the Provincial Legislature, or the Governor of Orissa under the Government of India Act, 1935.]

"Part." (38) "Part" shall mean a part of the Act or Regulation in which the word occurs;

"Person." (39) "person" shall include any company or association or body of individuals, whether incorporated or not;

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(5) Added by Government of India (Adaptation of Indian Laws) Order, 1937.

(6) Added by Act I of 1903, S. 3, 2nd inserted by Act X of 1914; 3rd inserted by Act XXIV of 1917; 4th inserted by Act XVIII of 1928.

(7) Cls. (37-*a*) and (37-*b*) added by the Government of India (Adaptation of Indian Laws) Order, 1937.

"Political Agent."

(40) "Political Agent" shall include—

(*a*) the princial officer representing the [8][Crown] in any territory or place beyond the limits of British India, and

(*b*) any officer [9][* * * *] appointed [9][* * * *] to exercise all or any of the powers of a Political Agent for any place not forming part of British India under the law for the time being in force relating to foreign jurisdiction [9][* * * *]:

"Presidency-town."

(41) "Presidency-town" shall mean the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be:

"Privy Council."

(42) "Privy Council" shall mean the Lords and others for the time being of Her Majesty's Most Honourable Privy Council:

"Province."

[10][(43) 'Province' shall mean a Presidency, a Governor's Province, a Lieutenant-Governor's Province or a Chief Commissioner's Province:

"Provincial Government."

(43-*a*) 'Provincial Government,' as respects anything done or to be done after the commencement of Part III of the Government of India Act, 1935, shall mean—

(*a*) in a Governor's Province, the Governor acting or not acting in his discretion, and exercising or not exercising his individual judgment, according to the provision in that behalf made by and under the said Act; and

(*b*) in a Chief Commissioner's Province, the Central Government, and, as respects anything done before the commencement of Part III of the said Act, shall mean the authority or person authorized at the relevant date to administer executive Government in the Province in question:]

"Public nuisance."

(44) "public nuisance" shall mean a public nuisance as defined in the Indian Penal Code;

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(8) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(9) Omitted by *ibid.*

(10) Cls. (43) and (43-*a*) have been substituted by *ibid.*

[11][(44-*a*) "Punjab Act" shall mean an Act made by the Lieutenant-Governor of the Punjab in Council under the Indian Councils Acts, 1861 and 1892], [or the Indian Councils Acts, 1861 to 1909,] [or the Government of India Act, 1915], [or by the local Legislature or the Governor of the Punjab under the Government of India Act], [12][or by the Provincial Legislature or the Governor of the Punjab under the Government of India Act, 1935] :

"Punjab Act."

(45) "registered" used with reference to a document, shall mean registered in British India under the law for the time being in force for the registration of documents;

"Registered."

(46) "Regulation," shall mean a Regulation made [12][by the Central Government] under the Government of India Act, 1870, [13][or the Government of India Act, 1915,] [14][or the Government of India Act], [12][or under S. 95 or S. 96 of the Government of India Act, 1935] :

"Regulation."

(47) "rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment;

"Rule."

(48) "schedule" shall mean a schedule to the Act or regulation in which the word occurs;

"Schedule."

(49) "Scheduled District" shall mean a "Scheduled District" as defined in the Scheduled Districts Act, 1874:

"Scheduled district."

(50) "section" shall mean a section of the Act or Regulation in which the word occurs;

"Section."

(51) "ship" shall include every description of vessel used in navigation not exclusively propelled by oars;

"Ship."

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(11) First bracket inserted by Act I of 1903, S. 3—second inserted by Act X of 1914; third added by Act XXIV of 1917 and 4th added by Act XVIII of 1928.

(12) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

(13) Added by Act XXIV of 1917.

(14) Added by Act XVIII of 1928.

(52) "sign" with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark," with its grammatical variations and cognate expressions:

"Sign."

[15][(52-*a*) 'Sind Act' shall mean an Act made by the Provincial Legislature or the Governor of Sind under the Government of India Act, 1935] :

'Sind Act.'

(53) "son", in the case of any one whose personal law permits adoption, shall include an adopted son;

"Son."

(54) "sub-section" shall mean a sub-section of the section in which the word occurs;

"Sub-section."

[16][(54-*a*) 'suits by or against the Crown' and equivalent expressions shall include suits by or against the Secretary of State, the Secretary of State in Council, the Central Government, a Provincial Government or the Crown Representative:]

'Suits by or against the Crown.'

(55) "swear," with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing:

"Swear."

[17][(55-*a*) "United Provinces Act" shall mean an Act made by the Lieutenant-Governor of the North-Western Provinces and Oudh (or of the United Provinces of Agra and Oudh) in Council under the Indian Councils Act, 1861, or the Indian Councils Acts, 1861 and 1892,] [18][or the Indian Councils Acts, 1861 to 1909], [18-a][or the Government of India Act, 1915], [19][or by the Local Legislature or the Governor of the United Provinces under the Government of India Act],

"United Provinces Act."

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(15) Cl. (52-*a*) added by Government of India (Adaptation of Indian Laws) Order, 1937.

(16) Cl. (54-*a*) added by *ibid.*

(17) Inserted by Act I of 1903, S. 3.

(18) Inserted by Act X of 1914.

(18-a) Added by Act XXIV of 1917.

(19) Added by Act XVIII of 1928.

[20][or by the Provincial Legislature or the Governor of the United Provinces under the Government of India Act, 1935:]

"Vessel." (56) "vessel" shall include any ship or boat or any other description of vessel used in navigation:

"Will." (57) "will" shall include a codicil and every writing making a voluntary posthumous disposition of property:

"Writing." (58) expressions referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form: and

"Year." (59) "year" shall mean a year reckoned according to the British calendar.

Application of foregoing definitions to previous enactments.

4. (1) The definitions in S. 3 of the following words and expressions, that is to say, "affidavit," "barrister," [20-a][* * *] "District Judge," "father," [20-a][* * * * * * *] [21][* * *] [20-a][* *] "immovable property," imprisonment," [20-a][* * * * *] "magistrate," "month," "movable property," "oath," "person," "section," "son," "swear," "will," and "year," apply also, unless there is anything repugnant in the subject or context, to all [21-a][Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

(2) The definitions in the said section of the following words and expressions, that is to say, "abet," "chapter," "commencement," "financial year," "local authority," "master," "offence," "part," "public nuisance," "registered," "schedule," "ship," "sign," "sub-section," and "writing," apply also, unless there is anything repugnant in the subject or context, to all [21-a][Central Acts] and Regulations made on or after the fourteenth day of January, 1887.

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(20) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

(20-a) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

(21) Repealed by Act XVIII of 1919.

(21-a) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

[22][4-A. (1) The definition in S. 3 of the expressions "British India", "Central Act", "Central Government", "Central Legislature", "Chief Controlling Revenue Authority", "Chief Revenue Authority" "Crown contracts", "Crown debts", "Crown grants" "Crown liabilities", "Crown property", "Crown Representative", "Crown Revenues", "Federal Government", "Federal Railway Authority", "Gazette", "Government", "Government Securities", "High Court", "India", "Indian law", "Indian State", "Official Gazette", "Provincial Government," and "suits by or against the Crown," apply also, unless there is anything repugnant in the subject or context, to all Indian laws.

Application of certain definition to all Indian laws.

(2) In any Indian law, references to the "Provincial Government" or "Central Government" in any provision conferring power to make appointments to the civil services of, or civil posts under, the Crown in India include references to such person as the Provincial Government or the Central Government, as the case may be, may direct, and in any provision conferring power to make rules prescribing the conditions of service of persons serving His Majesty in a civil capacity in India, include references to any person authorised by the Provincial Government or the Central Government, as the case may be, to make rules for the purpose.

(3) The references in any Indian law to servants of or under, or to service of or under, a Government or a Province, to property of, or belonging to, or vested in, the Secretary of State in Council or a Government or a Province, and to forfeitures to a Government or a Province, shall be construed as references respectively to persons in the service of the Crown, to the service of the Crown, to property vested in the Crown and to forfeitures to the Crown.]

General Rules of Construction.

5. (1) Where any [23][Central Act] is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent of the Governor-General.

Coming into operation of enactments.

(22) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

(23) Substituted by *ibid.*

(2) [24][Where any [25][Central Act] is reserved, under S. 68 of the Government of India Act, 1915, [or under S. 32 of the Government of India Act, 1935], for the signification of His Majesty's pleasure thereon, then, if no later date is expressed, it shall come into operation, if assented to by His Majesty, on the day on which that assent is duly notified.]

(3) Unless the contrary is expresser, a [25][Central Act] or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

Coming into operation of Governor-General's Act.

[1] [5-A. Where any Act made by the Governor-General under S. 44 of the Government of India Act, 1935, is not expressed to come into operation on a particular day it shall come into operation on the date on which it is enacted by the Governor-General.]

Effect of repeal.

6. Where this Act, or any [25][Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(*a*) revive anything not in force or existing at the time at which the repeal takes effect; or

(*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(*c*) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(*d*) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(*e*) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penal-

(24) Substituted by Act XXIV of 1917.

(25) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(1) Added by Government of India (Adaptation of Indian Laws) Order, 1937.

ty, forfeiture or punishment may be imposed as if the Repealing Act or Regulation had not been passed.

Repeal of Act making textual amendment in Act or Regulation.

[2][6-A. Where any [3][Central Act] or Regulation made after the commencement of this Act repeals any enactment by which the text of any [3][Central Act] or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.]

Revival of repealed enactments.

7. (1) In any [3][Central Act] or Regulation made after the commencement of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

(2) This section applies also to all [3][Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Construction of reference to repealed enactments.

[4][8. (1)] Where this Act, or and [3][Central Act] or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

[4](2) Where any act of Parliament repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any [3][Central Act] or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provisions so re-enacted.

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(2) Added by Act XIX of 1936.

(3) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(4) Re-numbered as S. 8 (1) and cl. (2) added by Act XVIII of 1919.

Commencement and termination of time.

9. (1) In any [5][Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from" and, for the purpose of including the last in a series of days or any other period of time, to use the word "to."

(2) This section applies also to all [5][Central Acts] made after the third day of january, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Computation of time.

10. (1) Where, by any [5][Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies.

(2) This section applies also to all [5][Central Acts] and Regulations made on or after the fourteenth day of January, 1887.

Measurement of distances.

11. In the measurement of any distance, for the purposes of any [5][Central Act] or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

Duty to be taken *pro rata* in enactments.

12. Where, by any enactment now in force or hereafter to be in force, any duty of customs or excise, or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

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(5) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

Gender and number.

13. In all [6][Central Acts] and Regulations, unless there is anything repugnant in the subject or context—

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and *vice versa*.

References to the Sovereign.

[7][13-A. In all [6](Central Acts) and Regulations, references to the Sovereign or to the Crown shall, unless a different intention appears, be construed as references to the Sovereign for the time being.]

Powers and Functionaries.

Powers conferred on the Government to be exercisable from time to time.

14. (1) Where, by any [6][Central Act] or Regulation made after the commencement of this Act, any power is conferred [8][* *] then, [9][unless a different intention appears,] that power may be exercised from time to time as occasion requires.

(2) This section applies also to all [6][Central Acts] and Regulations made on or after the fourteenth day of January, 1887.

Power to appoint to include power to appoint *ex officio*.

15. Where, by any [6][Central Act] or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office.

Power to appoint to include power to suspend or dismiss.

16. Where, by any [6][Central Act] or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having [10][for the time being] power to make the appointment shall also have power to suspend or dismiss any person appointed [11][whether by itself or any other authority] in exercise of that power.

(6) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(7) Inserted by Act XVIII of 1919.

(8) Omitted by *ibid.*

(9) Inserted by *ibid.*

(10) Inserted by Act XVIII of 1928.

(11) Substituted by Act XVIII of 1928.

Substitution of functionaries.

17. (1) In any [12][Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

(2) This section applies also to all [12][Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Successors.

18. (1) In any [12][Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

(2) This section applies also to all [12][Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Official Chiefs and subordinates.

19. (1) In any [12][Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

(2) This section applies also to all [12][Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Provisions as to Orders, Rules, etc., made under Enactments.

Construction of orders, etc., issued under enactments.

20. Where, by any [12][Central Act] or Regulation, a power to issue any order, [13][notification], scheme, rule, form or by-law is conferred, then expressions used in the order, [13][notification], scheme, rule, form or

(12) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(13) Inserted by Act I of 1903, S. 3—*Cf.* S. 31 of the Interpreta-

by-law, if it is made after the commencement of this Act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act or Regulation conferring the power.

Power to make, to include power to add to, amend, vary or rescind, orders, rules or by-laws.

21. Where, by any [13-a][Central Act] or Regulation, a power to [14][issue notifications], orders, rules or by-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add, to amend vary or rescind any [15][notifications], orders, rules or by-laws so [14][issued].

Making of rules or by-laws and issuing of orders between passing and commencement of enactment.

22. Where, by any [13-a][Central Act] or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or by-laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act or Regulation; but rules, by-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

Provisions applicable to making of rules or by-laws after previous publication.

23. Where, by any [13-a][Central Act] or Regulation, a power to make rules or by-laws is expressed to be given subject to the condition of the rules or by-laws being made after previous publication, then the following provisions shall apply, namely:—

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tion Act, 1889 (52 & 53 Vic., c. 63), and S. 10 of the Madras General Clauses Act (Madras Act I of 1891).

(13-a) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(14) Substituted by Act I of 1903, S. 3.

(15) Inserted by *ibid.*

(1) the authority having power to make the rules or by-laws shall, before making them, publish a draft of the proposed rules or by-laws for the information of persons likely to be affected thereby;

(2) the publications shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the [Central Government] or the [Provincial Government] prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or by-laws, and where the rules or by-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or by-laws from any person with respect to the draft before the date so specified;

(5) the publication in the Gazette of a rule or by-law purporting to have been made in exercise of a power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law has been duly made.

Continuation, of orders, etc., issued under enactments repealed and re-enacted.

24. Where any [16][Central Act] or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any [17][appointment, notification,] order, scheme, rule, form or by-law, [17][made or] issued under the repealed Act or Regulation shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been [made or] issued under the provisions so re-enacted, unless and until it is superseded by any [17-a][appointment, notification,] order, scheme, rule, form or by-law [17-a][made or] issued under the provisions so re-enacted and when any [16][Central Act] or [18][Regulation, which, by a notification under S. 5

(16) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(17) Inserted by Act I of 1903, S. 3.

(17-a) Inserted by Act I of 1903, S. 3.

(18) Inserted by Act XVII of 1914.

or S. 5-A of the Scheduled Districts Act, 1874, or any like law, has been extended to any local area, has, by subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section].

MISCELLANEOUS.

Recovery of fines.

25. Sections 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or by-law, unless the Act, Regulation, rule or by-law contains an express provision to the contrary.

Provision as to offences punishable under two or more enactments.

26. Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

Meaning of service by post.

27. Where any [18-a][Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions, "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Citation of enactments.

28. (1) In any [18-a][Central Act] or Regulation and in any rule, by-law, instrument or document made under, or with reference to, any such Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and year

(18-a) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

(2) In this Act and in any [19][Central Act] or Regulation made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other parts mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

Saving for previous enactments, rules and by-laws.

29. The provisions of this Act respecting the construction of Acts, Regulations, rules or by-laws made after the commencement of this Act shall not affect the construction of any Act, Regulation, rule or by-law made before the commencement of this Act, although the Act, Regulation, rule or by-law is continued or amended by an Act, Regulation, rule or by-law made after the commencement of this Act.

Application of Act to Ordinances.

[20]30. In this Act, the expression [19][Central Act] wherever it occurs, except in S. 5, and the word 'Act' in clauses(9), (12),(38), (48) and (50) of S. 3 and in S. 25 shall be deemed to include an Ordinance made and promulgated by the Governor-General under S. 23 of the Indian Councils Act, 1861, [21][or S. 72 of the Government of India Act, 1915], [22][or S. 42 or S. 43 of the Government of India Act, 1935.].

[23]30-A. [* * * * *].

[23]31. [* * * * *].

SCHEDULE.

(*Repealed by Act I of* 1903).

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(19) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(20) This section was inserted by Act XVII of 1914.

(21) The words "or S. 72....Act 1915" were added by Act XXIV of 1917.

(22) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

(23) Sections 30-A and 31 were omitted by *ibid.*

APPENDIX C.

THE BENGAL GENERAL CLAUSES ACT, 1899.

(BENGAL ACT I OF 1899).

STATEMENT OF REPEALS AND AMENDMENTS.

Amended and repealed in part by Ind. Act I of 1903; the Government of India (Adaptation of Indian Laws) Order, 1937.

Repealed (in Eastern Bengal) by E. B. and A. Act I of 1909; Re-extended to Eastern Bengal by Ben. Act I of 1914; Amended by Ben. Act I of 1914.

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21. Construction of orders, etc., issued under Bengal Acts.
22. Power to make to include power to add to, amend, vary or rescind, orders, etc.

SECTION.
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THE BENGAL GENERAL CLAUSES ACT, 1899.[1]

(BENGAL ACT I OF 1899).

[18*th January*, 1899.

An Act for further shortening the language used in Bengal Acts, and for other purposes.

WHEREAS it is expedient further to shorten the language used in Bengal Acts, and to make certain other provisions relating to those Acts;

It is hereby enacted as follows:—

PRELIMINARY.

Short title.

1. This Act may be called THE BENGAL GENERAL CLAUSES ACT, 1899.

(1) LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, *see* Calcutta Gazette, 1898, Pt. IV, p. 570, and for Proceedings in *Council*, *see ibid.*, Supplement, pp. 1426, 1428, 1579, and 2538.

LOCAL EXTENT.—It originally extended to the whole of the former Province of Bengal, including the de-regulationised tracts. It was, however, repealed and re-enacted for Eastern Bengal (including the Chittagong Hill-tracts) by the Eastern Bengal and Assam General Clauses Act, 1909 (E. B. & A. Act I of 1909). The former Act has again been extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act I of 1914) as applying only to Bengal Acts V of 1908, II of 1909, II of 1910, II of 1911, V of 1911 and all Bengal Acts passed after the 1st of April, 1912—*see* Bengal Act I of 1914, S. 3, Sch. I.

BASIS.—This Act closely follows the General Clauses Act, 1897 (X of 1897), passed by the Governor-General in Council and some of its clauses are based on clauses of the Interpretation Act, 1889. (52 & 53, Vict., c. 63).

2. (*Repeal of Bengal Act V of* 1867). *Rep. by the Amending Act,* 1903 (*I of* 1903).

GENERAL DEFINITIONS.

3. In this Act, and in all Bengal Acts made after the commencement of this Act[2] unless there is anything repugnant in the subject or context,—

Definitions.

"Abet."

(1) "abet," with is grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code;[3]

"Act."

[4](2) "act," used with reference to an offence or a civil wrong, shall include a series of acts; and words which refer to acts done shall extend also to illegal omissions;

"Affidavit."

[5](3) "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;

APPLICATION.—The General Clauses Act, 1897, applies, for the most part, only to Acts of the Governor-General in Council and to Regulations made under the Government of India Act, 1870 (33 & 34 Vict., c. 3); but S. 12 applies also to India enactment of all kinds, including, among others, Bengal Acts. The section runs as follows:—

"12. Where, by any enactment now in force or hereafter to be in force, any duty of customs or excise, or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity."

Duty to be taken *pro rata.*

The Bengal General Clauses Act, 1899, is expressed, in every section except Ss. 27 and 30, to apply only to Bengal Acts.

The Eastern Bengal and Assam General Clauses Act, 1909 (E. B. & A. Act I of 1909), has effect in Eastern Bengal (*vide* paragraph 2 of this footnote above) and in Western Bengal as applying only to certain E. B. & A. Acts extended to that area by the Bengal Laws Act. 1914 (Bengal Act I of 1914).

(2) Some of the definitions in this section apply also to Bengal Acts made between the 1st June, 1867, and the commencement of the present Act—*see* S. 4. For two further definitions applying to such Acts, *see* S. 5.

(3) *See* Act XLV of 1860, Ss. 107, 108 and 108-A.

(4) *Cf.* S. 33 of the Indian Penal Code.

(5) *Cf.* the definitions of "oath" and "swear" in clauses (29) and (44).

[6](4) "barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland;

"Barrister."

"Bengal."

[7](5) [*Omitted.*]

[8](6) "Bengal Act" shall mean an Act made by the Lieutenant-Governor of Bengal in Council under [9][the Indian Councils Act, 1861, or] the Indian Councils Acts, 1861 and 1892 [10][or the Indian Councils Acts, 1861, 1892 and 1909, or made by the Governor in Council of Fort William in Bengal under the Indian Councils Acts, 1861, 1892 and 1909] [11][or the Government of India Act, 1915, or by the Local Legislature or the Governor of Bengal under the Government of India Act, or by the Provincial Legislature or the Governor of Bengal under the Government of India Act, 1935];

"Bengal Act."

"Chapter."

(7) "Chapter" shall mean a Chapter of the Act in which the word occurs;

(8) "Collector" shall mean, in Calcutta, the Collector of Calcutta, and elsewhere the Chief officer in charge of the revenue administration of a district;

"Collector."

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(6) For a similar definition, *see* the Indian High Courts Act, 1861 (24 & 25 Vict., c. 104), s. 19.

(7) Clause (5) of S. 3 was omitted by Government of India (Adaptation of Indian Laws) Order, 1937, Sch. IV. It ran thus: Bengal shall mean the territories within British India for the time being under the administration of the Lieutenant-Governor of Bengal.

(8) A similar definition is given in clause (5) of S. 3 of the General Clauses Act, 1897 (X of 1897). The definition was inserted in order to introduce a uniform method of citing Acts of the Bengal Council and to suggest the abandonment of the various other methods formerly adopted, *e.g.*, "Act (B.C.) of 1869," Act I of 1869 passed by the Lieutenant-Governor of Bengal in Council". The method of citation most commonly adopted was "Act I (B.C.) of 1869," but the abbreviation of "(B.C.)" is peculiarly inappropriate, inasmuch as it would stand equally well for Acts of the Bombay or Burma Council, and is the recognized abbreviation for Before Christ.

(9) These words and figures in square brackets in S. 3 (6) were inserted by the Amending Act, 1903 (I of 1903), Sch. II.

(10) These words and figures in square brackets in S. 3 (6) were added by the Bengal Laws Act, 1914 (Bengal Act I of 1914), S. 5, Sch. III.

(11) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937, Sch. IV.

[12](9) "commencement," used with reference to an Act, shall mean the day on which the Act comes into force;

"Commencement."

(10) "Commissioner" shall mean the chief officer in charge of the revenue administration of a division;

"Commissioner."

[13](11) "Consular officer" shall include consul-general, consul, vice-consul, consular agent, pro-consul and any person for the time being authorized to perform the duties of consul-general, consul, vice-consul or consular agent;

"Consular officer."

(12) "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;

"District Judge."

[14](13) "document" shall include any matter written,[15] expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, which is intended to be used or which may be used, for the purpose of recording that matter;

"Document."

(14) "enactment" shall include a Regulation (as hereinafter[16] defined and any Regulation of the Bengal Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid;

"Enactment."

(15) "father," in the case of any one whose personal law permits adoption, shall include an adoptive father;

"Father."

(16) "financial year" shall mean the year commencing on the first day of April;

"Financial year."

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(12) As to when an Act comes into force, *see* S. 6.

(13) For a similar definition, *see* the Consular Salaries and Fees Act, 1891 (54 & 55 Vict., c. 36), S. 3.

(14) For similar definitions, *see* the Indian Penal Code (Act XLV of 1860), S. 29, and the Indian Evidence Act, 1872 (I of 1872), S. 3.

(15) As to construction of expressions referring to writing, *see* clause (47) of this section.

(16) *See* clause (35) of this section.

"Good faith."

(17) [17]thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not;

"Government."

(18) "Government" or "the Government" shall include the [18][Provincial Government] as well as the [19][Central Government];

(19) [20][* * * * *].

"Her Majesty" or "the Queen."

(20) [21]"Her Majesty" or "the Queen" shall include her successors;

"Immovable property."

(21) [22]"immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fatened to anything attached to the earth;

"Imprisonment."

(22) "imprisonment" shall mean imprisonment of either description[23] as defined in the Indian Penal Code;

"Local authority."

(23) [24]"local authority" shall mean a Municipal Committee, District Board, body of Port Commissioners or other authority legal-

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(17) For a similar definition, *see* the Bill of Exchange Act, 1882 (45 & 46 Vict., c. 61), S. 90, and the Sale of Goods Act, 1893 (55 & 56 Vict., c. 71), S. 62 (2).

Definition in the present Act differs from the definition "of good faith" contained in S. 52 of the Indian Penal Code (Act XLV of 1860).

(18) Substituted for the words "Local Government" by Government of India (Adaptation of Indian Laws) Order, 1937.

(19) Substituted for the words "Government of India" by *ibid.*

(20) Clause 19 was omitted by *ibid.*, Sch. IV.

Cl. 19 ran thus: "Government of India" shall mean the Governor-General in Council or, during the absence of the Governor-General from his Council, the President in Council, or the Governor-General alone, as regards the powers which may be lawfully exercised by them or him respectively:

(21) As to His Majesty's title as Emperor of India, *see* the Royal Titles Act, 1901 (1 Edw. 7, c. 15) and Proclamation published in Gazette of India, 1901, Pt. I, p. 994.

(22) The expression "immoveable property" is defined differently in the Indian Registration Act, 1908, S. 2 (6). For a definition of "land" applicable to Bengal Acts made between the 1st June, 1867, and the 18th January, 1899, *see* S. 5, *post.*

(23) *I. e.*, rigorous or simple, *see* S. 53 of Act XLV of 1860.

(24) For a similar definition, *see* the Local Authorities Loans Act, 1914 (IX of 1914), S. 2.

ly entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;

(24) [25][* * * * *].

"Magistrate." (25) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure,[1] for the time being in force;

"Master" (of a ship). (26) [2]"master," used with reference to a ship, shall mean any person (except a pilot or barbour-master) having for the time being control or charge of the ship;

"Month." (27) "month" shall mean a month reckoned according to the British calendar;

"Movable property." (28) "movable property"[3] shall mean property of every description, except immovable property;

"Oath." (29) "oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;[4]

"Offence." (30) [5]"offence" shall mean any act or omission made punishable by any law for the time being in force;

"Part." (31) "Part" shall mean a part of the Act in which the word occurs;

"Person." (32) [6]"person" shall include any company or association or body of individuals, whether incorporated or not;

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(25) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

Cl. 24 ran thus: "Local Government" shall mean the Lieutenant-Governor of Bengal.

(1) The Code now in force is Act V of 1898.

(2) For a similar definition, *see* the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), S. 742.

(3) For a comprehensive definition of the word "property", *see* S. 168 of the Bankruptcy Act, 1883 (46 & 47 Vict., c. 52).

(4) *Cf.* the definition of "affidavit" in clause (3), *ante*.

(5) For a similar definition, *see* S. 4 (*o*) of the Code of Criminal Procedure, 1898 (V of 1898).

(6) For a different definition of "person," applicable to Bengal Acts made between the 1st June, 1867 and the 18th January, 1899, *see* S. 5.

"Public nuisance."

(33) "public nuisance" shall mean a public nuisance as defined in the Indian Penal Code;[7]

"Registered."

(34) "registered," used with reference to a document, shall mean registered in British India under the law[8] for the time being in force for the registration of documents;

"Regulation."

(35) "Regulation" shall mean a Regulation made under the Government of India Act, 1870;

"Rule."

(36) [9]"rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment;

"Schedule."

(37) "Schedule" shall mean a schedule to the Act in which the word occurs;

"Scheduled District."

(38) "Scheduled District" shall mean a "Scheduled District" as defined in the Scheduled Districts Act, 1874;

"Section."

(39) "section" shall mean a section of the Act in which the word occurs;

"Ship."

(40) [10]"ship" shall include every description of vessel[11] used in navigation not exclusively propelled by oars;

"Sign."

(41) "sign," with its grammatical variations and cognate expressions shall, with reference to a person who is unable to write his name,

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(7) *See* Act XLV of 1860.

(8) *See* the Indian Registration Act, 1908 (XVI of 1908).

(9) For provisions as to rules, *see* Ss. 21 to 26, 29 and 30.

Under the Government of India (Adaptation of Indian Laws) Order, 1937, Sch. I. The Scheduled Districts Act, 1874 (XIV of 1874) shall cease to have effect, without prejudice to the continuing validity of any notification, appointment, regulation, direction or determination made thereunder and in force immediately before the commencement of Part III of the Government of India Act, 1935. *See* the above Adaptation as regards the power of the Central Government and Provincial Government to introduce modifications or restrictions in the enactments having effect in any area in British India.

(10) For a similar definition, *see* the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), s. 742.

(11) For definition of "vessel," *see* cl. (45) of this section, *post.*

include "mark" with its grammatical variations and sognate expressions;

"Son." (42) "son," in the case of any one whose personal law permits adoption, shall include an adopted son;

"Sub-section." (43) "sub-section" shall mean a sub-section of the section in which the word occurs;

"Swear." (44) [12]"swear," with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing;

"Vessel." (45) [13]"vessel" shall include any ship[14] or boat or any other description of vessel used in navigation;

"Will." (46) [15]"will" shall include a codicil and every writing making a voluntary posthumous disposition of property;

"Writing." (47) expressions referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form; and

"Year." (48) "year" shall mean a year reckoned according to the British calendar.[16]

Application of certain of the foregoing definitions to previous Bengal Acts. 4. The definitions in S. 3 of the following words, that is to say, "affidavit," "Magistrate," "month," "oath," and "swear," apply also, unless there is anything repugnant in the subject or context, to all Bengal Acts made between the first day of June, 1867, and the commencement of this Act.

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(12) *Cf.* the definition of "affidavit" in cl. (3).

(13) For a similar definition, *see* the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), S. 742.

The word "vessel" is differently defined in the Indian Penal Code (Act XLV of 1860), S. 48.

(14) For definition of "ship," *see* cl. (40) of this section.

(15) The word "will" is differently defined in the Indian Succession Act, 1865 (X of 1865), S. 3.

(16) For definition of "financial year," *see* cl. (16), *ante*.

Continuance of certain definitions for purposes of previous Bengal Acts.

5. In all Bengal Acts made between the first day of June, 1867, and the commencement of this Act, unless there is anything repugnant in the subject or context,—

(1) "land" includes houses and buildings and corporeal hereditaments and tenements of any tenure, unless where there are words to exclude houses and buildings or to restrict the meaning to tenements of some particular tenure; and

(2) "person" includes any incorporated company or incorporated association of persons.

GENERAL RULES OF CONSTRUCTION.

Coming into operation of Bengal Acts.

6. [17][(1) Where any Bengal Act is not expressed to come into operation on a particular day,[18] then it shall come into operation, if it is an Act of the Legislature, on the day on which the assent thereto of the Governor, the Governor-General, or His Majesty, as the case may require, is first published in the Official Gazette, and, if it is an Act of the Governor, on the day on which it is first published as an Act in the Official Gazette.]

(2) Unless the contrary is expressed, a Bengal Act shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

Printing of date on which Act is published after having received the assent of the Governor-General.

7. In this Act, and in every Bengal Act made after the commencement of this Act, the date of such publication as is mentioned in S. 6, [19][* *] shall be printed above the title of the Act, and shall form part of the Act.

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(17) Substituted for the original sub-S. (1) of S. 6 by Government of India (Adaptation of Indian Laws) Order, 1937, Sch. IV. The original sub-section ran thus: "Where any Bengal Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it is first published in the Calcutta Gazette after having received the assent of the Governor-General."

(18) For power to make rules or by-laws, or to issue orders, with respect to certain matters, between the publication and the commencement of a Bengal Act, *see* S. 23, *post*.

(19) The words, figures and brackets "sub-section (1)" were omitted by Government of India (Adaptation of Indian Laws) Order, 1937, Sch. IV.

Effect of repeal.

8. Where this Act, or any Bengal Act made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(*a*) revive anything not in force or existing at the time at which the repeal takes effect; or

(*b*) affect the previous operation of any enactment so repealed or anything duly done[20] or suffered thereunder; or

(*c*) affect any right, privilege, obligation or liability[20] acquired, accrued or incurred under any enactment so repealed; or

(*d*) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(*e*) affect any investigation, legal proceeding or remedy, in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

Revival of repealed enactments.

9. (1) In any Bengal Act made after the commencement of this Act it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

(2) This section applies also to all Bengal Acts made between the first day of June, 1867, and the commencement of this Act.

Construction of references to repealed enactments.

10. Where this Act, or any Bengal Act made after the commencement of this Act, repeals and re-enacts with or without modifications, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so

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(20) As to the continuance of orders, etc., made under an enactment which is repealed and re-enacted, *see* S. 25, *post*.

repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Commencement and termination of time.

11. In any Bengal Act made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from," and, for the purpose of including the last in a series of days or any other period of time, to use the word "to."

Computation of time.

12. Where, by any Bengal Act made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877,[21] applies.

Measurement of distances.

13. In the measurement of any distance for the purposes of any Bengal Act made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

Gender and number.

14. In all Bengal Acts, unless there is anything repugnant in the subject or context,—

(1) words importing the masculine gender sahll be taken to include females; and

(2) words in the singular shall include the plural, and *vice versa*.

POWERS AND FUNCTIONARIES.

Powers conferred on the Government to be exercisable from time to time.

15. Where, by any Bengal Act made after the commencement of this Act, any power is conferred on the Government, then that power may be exercised from time to time as occasion requires.

(21) *See* now the Indian Limitation Act, 1908 (IX of 1908).

Power to appoint to include power to appoint *ex officio*.

16. Where, by any Bengal Act, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office.

Power to appoint to include power to suspend or dismiss.

17. Where, by any Bengal Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power.

Substitution of functionaries.

18. In any Bengal Act made after the commencement of this Act it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

Successors.

19. In any Bengal Act made after the commencement of this Act it shall be sufficient, for the purpose of indicating the relation of law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

Official chiefs and subordinates.

20. In any Bengal Act made after the commencement of this Act it shall be sufficient, for the purpose of expressing that a law relative to the chief superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

PROVISIONS AS TO ORDERS, RULES, ETC., MADE UNDER ENACTMENTS.

Construction of orders, etc., issued under Bengal Acts.

21. Where, by any Bengal Act, a power to issue any order, scheme, rule, by-law, notification or form is conferred, then expressions used in the order, scheme, rule, by-law, notification or form, if it is made after

the commencement of this Act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act conferring the power.

Power to make, to include power to add to, amend, vary or rescind, orders, etc.

22. Where, by any Bengal Act, a power to make orders, rules, by-laws or notifications is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any orders, rules, by-laws or notifications so made.

Making of rules or by-laws and issuing of orders between publication and commencement of Bengal Act.

23. Where, by any Bengal Act which is not to come into operation [22][immediately on the passing thereof], a power is conferred to make rules or by-laws, or to issue orders with respect to the application of the Act, or with respect to the establishment of any Court or office, or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act,

then that power may be exercised at any time [23][after the passing of the Act], but rules, by-laws or orders so made or issued shall not take effect till the commencement of the Act.

Provisions applicable to making of rules or by-laws after previous publication.

24. Where, by any Bengal Act, a power to make rules or by-laws is expressed to be given subject to the condition of the rules or by-laws being made after previous publication, then the following provisions shall apply, namely—

(1) the authority having power to make the rules or by-laws shall, before making them, publish a draft of the proposed rules or by-laws for the information of persons likely to be affected thereby;

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(22) Substituted for the words 'on the day on which it is first published in the Calcutta Gazette after having received the assent of the Governor-General' by the Government of India (Adaptation of Indian Laws) Order, 1937, Sch. IV.

(23) Substituted for the words "after the Act has been published as aforesaid" by *ibid.*

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the [24][Central Government or, as the case may be, the Provincial Government] prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or by-laws, and, where the rules or by-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or by-laws from any person with respect to the draft before the date so specified;

(5) the publication in the [25][Official Gazette] of a rule or by-law purporting to have been made in exercise of a power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law has been duly made.

Continuation of orders, etc., issued under enactments repealed and re-enacted.

25. Where any enactment is, after the commencement of this Act, repealed and re-enacted by a Bengal Act with or without modification, then, unless it is otherwise expressly provided, any [1][appointment], order, scheme, rule, by-law, notification or form [2][made or] issued under the repealed enactment shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been [2][made or] issued under the provisions so re-enacted, unless and until it is superseded by any [1][appointment], order, scheme, rule, by-law, notification or form [2][made or] issued under the provisions so re-enacted.

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(24) Substituted for the words "Local Government" by Government of India (Adaptation of Indian Laws) Order, 1937.

(25) Substituted for the words "Calcutta Gazette" by *ibid.*, para. 4 (1).

(1) The word "appointment" in S. 25 was inserted by the Repealing and Amending Act, 1903 (I of 1903), Sch. II.

(2) The words "made or" in S. 25 were inserted by the same Act.

MISCELLANEOUS.

Recovery of fines.

26. Sections 63 to 70 of the Indian Penal Code, and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines[3] shall apply to all fines imposed under any Bengal Act or any rule or by-law made under any Bengal Act, unless the Act, rule or by-law contains an express provision to the contrary.

Provision as to offences punishable under two or more enactments.

27. Where an act or omission constitutes an offence[4] under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

Meaning of service by post.

28. Where any Bengal Act made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Citation of enactments.

29. (1) In any Bengal Act, and in any rule, by-law, instrument or document made under, or with reference to any Bengal Act, any enactment may be cited by reference to the title or short title [5][if any] conferred thereon or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

(2) In this Act, and in any Bengal Act made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention

(3) *See* Ss. 386 to 389 of Act V of 1898.

(4) For definition of "offence," *see* S. 3 (30), *ante*.

(5) Short titles have been conferred on all the enactments.

appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

Saving for previous Acts, rules and by-laws.

30. Where any Act, rule or by-law made after the commencement of this Act continues or amends any Acts, rules or by-laws made before the commencement of this Act, the foregoing sections of this Act shall not by reason merely of such continuance or amendment affect the construction of such Acts, rules or by-laws.

Application to Eastern Bengal and Assam Acts and Ordinances and Regulations under the Government of India Act, 1935.

[6][31. The provisions of this Act shall apply in relation to any Eastern Bengal and Assam Act as in force in Bengal and any Regulation made by the Governor of Bengal under S. 92 of the Government of India Act, 1935, as they apply in relation to Bengal Acts other than Acts made by the Governor of Bengal under S. 90 of the said Act, and shall apply in relation to any Ordinance promulgated by the Governor under S. 88 or S. 89 of the said Act, as they apply in relation to Acts made by the Governor under the said S. 90.]

(6) The new S. 31 was inserted by the Government of India (Adaptation of Indian Laws) Order, 1937, Sch. IV.

APPENDIX D.

THE BOMBAY GENERAL CLAUSES ACT, 1904.

(BOMBAY ACT I OF 1904).

[*30th May*, 1904.

Historical Memoir.

Year.	No. of Act.	Name of Act.	How affected.
1886	III	Bombay General Clauses Act.	Rep. (except so much of Sch. B as relates to unrepealed enactments) Bombay Act I of 1904, as amended by Bombay Act IV of 1905.
1891	I	General Clauses (amending Bombay Act III of 1886)	Rep. Bombay Act I of 1904.
1896	I	General Clauses amending Act III of 1886).	Rep. Bombay Act I of 1904
1904	I	Bombay General Clauses ..	Sch. Am. (as to Bombay Act III of 1886), Bombay Act IV of 1905, as from 30th May, 1904.

N.B.—For further enactments repealed, *see* Schs. A and B appended at the end of this Act.

An Act for further shortening the language used in Bombay Acts, and for other purposes.

WHEREAS it is expedient further to shorten the language used in Bombay Acts, and to make certain other provisions relating to those Acts; It is hereby enacted as follows:—

PRELIMINARY.

Short title.

1. This Act may be called THE BOMBAY GENERAL CLAUSES ACT, 1904.

Repeal.

2. The Bombay Acts mentioned in the Schedule are repealed to the extent specified in the fourth column thereof.

General Definitions.

Definitions.

3. In this Act, and in all Bombay Acts made after the commencement of this Act, unless there is anything repugnant in the subject or context:—

"Abet."

(1) "abet," with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code;

"Act."

(2) "act," used with reference to an offence or a civil wrong, shall include a series of acts; and words which refer to acts done shall extend also to illegal omissions;

"Affidavit."

(3) "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;

"Barrister."

(4) "barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland;

"Bombay Act."

(5) "Bombay Act" shall mean an Act made by the Governor of Bombay in Council under the Indian Councils Act, 1861, or the Indian Councils Acts, 1861 and 1892; [1][or the Indian Councils Acts, 1861 to 1909, or the Government of India Act, 1915 or made by the local Legislature or the Governor of the Presidency of Bombay under the Government of India Act, 1935];

(6) [2][* *].

(7) [2][* *].

(8) [2][* *].

"Chapter."

(9) "Chapter" shall mean a Chapter of the Act in which the word occurs;

"City of Bombay."

(10) "City of Bombay" shall mean the area within the local limits for the time being of the ordinary original civil jurisdiction of the Bombay High Court of Judicature;

"Collector."

(11) "Collector" shall mean, in the City of Bombay, the Collector of Bombay, and elsewhere the chief officer in charge of the Revenue-administration of a District;

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(1) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937

(2) Omitted by *ibid.*

(12) "Commencement," used with reference to an Act, shall mean the day on which the Act comes into force;

"Commencement."

(13) "Commissioner" shall mean, in Sind, the Commissioner in Sind, and elsewhere the Commissioner of a division appointed under the Bombay Land-Revenue Code, 1879, or any other law for the time being in force in this behalf;

"Commissioner."

(14) "Consular officer" shall include consul-general, consul, vice-consul, consular agent, pro-consul and any person for the time being authorised to perform the duties of consul-general, consul, vice-consul or consular agent;

"Consular Officer."

(15) "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;

"District Judge."

(16) "document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, which is intended to be used, or which may be used, for the purpose of recording that matter;

"Document."

(17) "enactment" shall include a Regulation (as hereinafter defined) and any Regulation of the Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid;

"Enactment."

(18) "father," in the case of any one whose personal law permits adoption, shall include an adoptive father;

"Father."

(19) "financial year" shall mean the year commencing on the first day of April;

"Financial year."

(20) a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not!

"Good faith."

(21) [3][* *].

(3) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

"High Court."

(22) "High Court" used with reference to civil proceedings, shall mean the highest Civil Court of appeal in the part of the Bombay Presidency in which the Act containing the expression operates;

"His Majesty" or "the King."

(23) "His Majesty" or "the King" shall include His successors;

"Immovable property."

(24) "immovable property" shall include land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;

"Imprisonment."

(25) "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code;

"Local authority."

(26) "local authority" shall mean a municipal corporation, municipality, local board, body of port trustees or commissioners, or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;

(27)[4][* *].

"Magistrate."

(28) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force;

"Master" (of a ship).

(29) "master," used with reference to a ship, shall mean any person (except a pilot or harbour-master) having for the time being control or charge of the ship;

"Month."

(30) "month" shall mean a month reckoned according to the British Calendar;

"Movable property."

(31) "movable property" shall mean property of every description, except immovable property;

"Oath."

(32) "oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;

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(4) Omitted by Government of India (Adaptation of Indian Laws) order, 1937.

"Offence." (33) "offence" shall mean any act or omission made punishable by any law for the time being in force;

"Part." (34) "part" shall mean a part of the Act in which the word occurs;

"Person." (35) "person" shall include any company or association or body of individuals, whether incorporated or not;

"Public nuisance." (36) "public nuisance" shall mean a public nuisance as defined in the Indian Penal Code;

"Registered." (37) "registered," used with reference to a document, shall mean registered in British India under the law for the time being in force for the registration of documents;

"Regulation." (38) "Regulation" shall mean a Regulation made under the Government of India Act, 1870;

"Rule." (39) "rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment;

"Schedule." (40) "schedule" shall mean a schedule to the Act in which the word occurs;

"Scheduled District." (41) "Scheduled District" shall mean a Scheduled District as defined in the Scheduled Districts Act, 1874;

"Section." (42) "section" shall mean a section of the Act in which the word occurs;

"Ship". (43) "ship" shall include every description of vessel used in navigation not exclusively propelled by oars;

"Sign." (44) "sign," with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark," with its grammatical variations and cognate expressions;

"Son." (45) "son," in the case of any one whose personal law permits adoption, shall include an adopted son;

"Sub-section." (46) "sub-section" shall mean a sub-section of the section in which the word occurs;

"Swear." (47) "swear," with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing;

"Vessel." (48) "vessel" shall include any ship or boat or any other description of vessel used in navigation;

"Will." (49) "will" shall include a codicil and every writing making a voluntary posthumous disposition of property;

"Writing." (50) expressions referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words or figures in a visible form on any substance; and

"Year." (51) "year" shall mean a year reckoned according to the British Calendar.

Application of certain of the foregoing definitions to previous Bombay Acts. 4. The definitions in S. 3 of the following words, that is to say, "abet," "affidavit," [5][* *] "Chapter," "City of Bombay," "Collector," "Commissioner," "good faith," "immovable property," "imprisonment," "Magistrate," "month," movable property," "oath," "part," "person," [5][* * * * *] "Schedule," "section," "swear," "vessel," "writing," and "year," apply also, unless there is anything repugnant in the subject or context, to all Bombay Acts, made before the commencement of this Act.

GENERAL RULES OF CONSTRUCTION.

Coming into operation of Bombay Acts. 5. [6](1) Where any Bombay Act is not expressed to come into operation on a particular day, then it shall come into operation, if it is an act of the Legislature on the

(5) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

(6) Substituted by *ibid.*

day on which the assent thereto of the Governor, the Governor-General or His Hajesty as the case may require, is first published in the Official Gazette and if it is an act of the Governor, on the day on which it is first published as an act in the Official Gazette.].

(2) Unless the contrary is expressed, a Bombay Act shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

Printing of date on which Act is published after having received the assent of the Governor-General.

6. In this Act, and in every Bombay Act made after the commencement of this Act, the date of such publication as is mentioned in S. 5, sub-S. (1) shall be printed above the title of the Act, and shall form part of the Act.

"Effect of Repeal.

7. Where this Act, or any Bombay Act made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(*a*) revive anything not in force or existing at the time at which the repeal takes effect; or

(*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(*c*) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(*d*) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(*e*) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

Revival of repealed enactments.

8. (1) In any Bombay Act made after the commencement of this Act it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

(2) This section applies also to all Bombay Acts made before the commencement of this Act.

Construction of references to repealed enactments.

9. Where this Act, or any Bombay Act made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Commencement and termination of time.

10. (1) In any Bombay Act made after the commencement of this Act it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

(2) This section applies also to all Bombay Acts made before the commencement of this Act.

Computation of time.

11. Where, by any Bombay Act made after the commencement of this Act, any act or proceeding is directed or allowed, to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 applies.

Measurement of distances.

12. In the measurement of any distance for the purpose of any Bombay Act made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

Gender and number.

13. In all Bombay Acts, unless there is anything repugnant in the subject or context,—

(*a*) words importing the masculine gender shall be taken to include females; and

(*b*) words in the singular shall include the plural, and *vice versa*.

POWERS AND FUNCTIONARIES.

Powers conferred on the Government to be exercisable from time to time.

14. Where, by any Bombay Act made after the commencement of this Act, any power is conferred on [7][any Government], then that power may be exercised from time to time as occasion required.

Power to appoint to include power to appoint *ex officio*.

15. Where, by any Bombay Act, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office.

Power to appoint to include power to suspend or dismiss.

16. Where, by any Bombay Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power.

Substitution of functionaries.

17. (1) In any Bombay Act made after the commencement of this Act it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title to the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

(2) This section applies also to all Bombay Acts made before the commencement of this Act.

Successors.

18. (1) In any Bombay Act made after the commencement of this Act it shall be sufficient, for the purpose of indicating the rela-

(7) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

tion of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

(2) This section applies also to all Bombay Acts made before the commencement of this Act.

Official Chiefs and subordinates.

19. (1) In any Bombay Act made after the commencement of this Act it shall be sufficient for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

(2) This section applies also to all Bombay Acts made before the commencement of this Act.

PROVISIONS AS TO ORDERS, RULES, ETC., MADE UNDER ENACTMENTS.

Construction of orders, etc., issued under Bombay Acts.

20. Where, by any Bombay Act, a power to issue any notification, order, scheme, rule, by-law or form is conferred, then expressions used in the notification, order, scheme, rule, by-law or form, if it is made after the commencement of this Act shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act conferring the power.

Power to make to include power to add to amend, vary or rescind, orders, etc.

21. Where, by any Bombay Act, a power to issue notifications, orders, rules or by-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or by-laws so issued.

Making of rules or by-laws and issuing of orders between publication and commencement of Bombay Act.

22. Where, by any Bombay Act which is not to come into operation on [8][the passing thereof] a power is conferred to make rules or by-laws, or to issue orders with respect to the application of the Act, or with respect to the establishment of any Court or office, or the appointment of any Judge or officer thereunder or with

(8) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act, then that power may be exercised at any time after [9][the passing thereof] but rules, by-laws or orders so made or issued shall not take effect till the commencement of the Act.

Publication of orders and notifications in the Bombay Government Gazette to be deemed to be due publication.

23. Where, in any Bombay Act or in any rule passed under any such Act, it is directed that any order, notification or other matter shall be notified or published, then such notification or publication shall, unless the enactment or rule otherwise provides, be deemed to be duly made if it is published in the Bombay Government Gazette.

Provisions applicable to making of rule or by-laws after previous publication.

24. Where, by any Bombay Act, a power to make rules or by-laws is expressed to be given subject to the condition of the rules or by-laws being made after previous publication, then the following provisions shall apply, namely—

(*a*) the authority having power to make the rules or by-laws shall, before making them, publish a draft of the proposed rules or by-laws for the information of persons likely to be affected thereby;

(*b*) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the [9][Central Government, or as the case may be, the Provincial Government] prescribes;

(*c*) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(*d*) the authority having power to make the rules or by-laws, and, where the rules or by-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make

(9) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

the rules or by-laws from any person with respect to the draft before the date so specified;

(*e*) the publication in the Bombay Government Gazette of a rule or by-law purporting to have been made in exercise of a power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law has been duly made.

Continuation of orders, etc., issued under enactments repealed and re-enacted.

25. Where any enactment is, after the commencement of this Act, repealed and re-enacted by a Bombay Act with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, by-law or form made or issued under the repealed enactment shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, by-law or form made or issued under the provisions so re-enacted.

MISCELLANEOUS.

Recovery of fines.

26. Sections 63 to 70 of the Indian Penal Code, and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines, shall apply to all fines imposed under any Bombay Act or any rule or by-law made under any Bombay Act, unless the Act, rule or by-law contains an express provision to the contrary.

Provision as to offences punishable under two or more enactments.

27. Where an act or omission constitutes an offence under two or more enactments then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

Meaning of service by post.

28. Where any Bombay Act made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears,

the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Citation of enactments.

29. (1) In any Bombay Act, and in any rule, by-law, instrument or document made under, or with reference to, any Bombay Act, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

(2) In this Act, and in any Bombay Act made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

Saving for previous Acts, rules and by-laws.

30. Where any Act, rule or by-law made after the commencement of this Act continues or amends any Acts, rules or by-laws made before the commencement of this Act the foregoing sections of this Act shall not by reason merely of such continuance of amendment affect the construction of such Acts, rules or by-laws.

Application to ordinances and Regulations under the Government of India Act, 1935.

[10][31. The provisions of this Act shall apply—

(*a*) In relation to any regulation made by the Governor of Bombay under S. 92 of the Government of India Act, 1935, as they apply in relation to Acts made by the Provincial Legislature, and

(*b*) In relation to any Ordinance promulgated by the Governor of Bombay under S. 88 or S. 89 of the said Act, as they apply in relation to Acts made under that Act by the Governor.].

(10) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

THE SCHEDULE.

ENACTMENTS REPEALED.

(*See Section* 2.)

Year.	No.	Title of Subject.	Extent of repeal.
1886	III	The Bombay General Clauses Act 1886.	The whole [11] (except as much of [12]Schedule B as relates to unrepealed enactments).
1891	I	An Act to amend the Bombay General Clauses Act, 1886.	So much as is unrepealed.
1896	I	An Act to amend the Bombay General Clauses Act, 1886.	The whole.

(11) Inserted by Bombay Act IV of 1905, and deemed to have come into force on 30th May, 1904.

(12) *Vide* same printed as appendix to this Act.

[13]SCHEDULE B TO

THE BOMBAY GENERAL CLAUSES ACT, 1886 (BOMBAY ACT III of 1886).

Verbal Amendments made in the Regulations and Acts of the Governor of Bombay in Council.

Enactment.			Words repealed.	Words, if any, substituted for the words repealed.
No. and year.	Section.	Clause.		
Regulations[14] XII of 1827.	19	1	"Magistrate"	"District Magistrate"
	19	6	"TheMagistrate"(the first time the words occur)	'the District Magistrate"
	19	6	"the Magistrate" (the second time the words occur)	"any Magistrate."
	19	6	"ordinary"	"simple."
	19	6	"without labour"	
	19	7	"Magistrate" (the first time the word occurs).	"District Magistrate."
	19	7	"Magistrate" (the second time the word occurs).	"Magistrate before whom proceedings against such individual are being held."
	19	8	"the Magistrate shall also"	"any Magistrate may"
	20	..	"Magistrate"	"District Magistrate."
	27	2	"Magistrate (each time the word occurs).	"District Magistrate."
	27	2	"ordinary"	"simple."
	27	2	"without hard labour"	
	37	1	"Magistrate"	"District or Sub-Divisional Magistrate."
XXII of 1827.	40	..	"Magistrate"	"District Magistrate."
	41	1	"local".	'District."
	42	1	'local"	'District."
	42	2, 3, 4	"Magistrate (each time the word occurs).	"District Magistrate."
XXV of 1827.	4	2	"Magistrate" (both times the word occurs).	"District Magistrate."
Acts IV of 1862.	7	..	"Magistrate"	"District Magistrate"
	1	..	"the Magistrate" (the second time the words occur)	"a Magistrate of the first class."

(13) This schedule so far as it affects unrepealed enactment has been reprinted here as an appendix to Bombay Act I of 1904, as the insertion of certain words in the schedule thereto by Bombay Act IV of 1905 has revived it in so far as it relates to such enactments.

(14) Bombay Reg. XII of 1827, S. 19, Cls. 1, 6, 7 and 8, is repealed by Bombay Act IV of 1890, wherever that Act extends.

Enactment.			Words repealed.	Words, if any, substituted for the words repealed.
No. and year.	Section.	Clause.		
	1	..	"Calendar"	
	6	..	"Magistrate"	"District Magistrate."
	6	..	"this Act"	"section 4."
	6	..	"of Police"	
	7	..	"of either kind"	
	7	..	"calendar"	
	10	..	"Magistrate"	"District Magistrate."
	10	..	"of Police"	
II of 1863.	2	..	"of this Act" (the first time the word occur).	
	3, 4, 5, 7, 8, 10, 11 & 13	..	"of this Act" (each time the words occur).	
	4, 5 & 11	..	"calendar" (each time the word occurs).	
	5 & 11	..	"collectorate or" (each time the words occur).	
	11	4	"collectorate"	"district."
	11	6	"collectorate" (each time the word occurs).	"district."
VII of 1863.	6	..	"of this Act" the first time the words occur).	
	7, 8, 9, 11, 12, 13 & 26	.	"of this Act" (each time the words occur).	
	9	1 & 2	"collectorate or" (each time the words occur).	
	9	3, 4, 6 & 7	"collectorate" (each time the word occurs).	"district."
	9	8	"calendar"	
	9	9	"Revenue"	
	9	9	"of the division"	
	12	..	"or Sub-Collector"	
	20	2	"annexed"	
	34	..	"of this Act" (each time the words occur).	
VII of 1867.	34	..	"full power Magistrate"	"Magistrate of the first class."
VIII of 1867.	[15][1	..	"Commissioner of Police" Act, 1861.	"Acts 1867 and 1900."]
	3, 4, 5, 15 & 18	..	"of Police" (wherever in the said sections those words follow the word "Commissioner").	
	5 & 9	..	"Police" (in each place in which the word precedes the word "commissioner."	
	18	..	"of this Act"	

(15) Inserted by Bombay Act I of 1891.

Enactment.			Words repealed.	Words, if any, substituted for the words repealed.
No. and year.	Section.	Clause.		
V of 1878.	3	3	"means, in Sindh, the Commissioner in Sindh and elsewhere a Commissioner of land-revenue, or, if Government appoint any other Officer to be a Commissioner for the purposes of this Act, such other officer."	"includes an officer appointed by Government to be a Commissioner for the purposes of this Act."
	3	4	"means a Collector of land-revenue or."	"includes."
	45 & 50	..	"of this Act" (each time the words occur).	

APPENDIX E.

THE MADRAS GENERAL CLAUSES ACT (I OF 1867.)

EFFECT OF SUBSEQUENT LEGISLATION.—Rep. in part by Act XVI of 1874. Application restricted by Madras Act I of 1891, S. 2.

[15*th February*, 1867; 21*st March*, 1867.

An Act to shorten the language used in Acts of the Governor of Fort St. George in Council, and to make certain provisions relating thereto.

Preamble.

WHEREAS it is expedient to enact once for all certain definitions of terms usually employed in the [1][Madras Acts] and to make certain other provisions regarding such Acts; It is enacted as follows:—

Meaning of words defined in Penal and Criminal Procedure Codes.

1. Whenever, in any future [1][Provincial Government] any word or expression shall be employed which has been defined in Chapter II of the Indian Penal Code, or in Chapter I of the Code of Criminal Procedure, such word or expression shall be taken to have the meaning assigned to it in those Chapters, unless it be otherwise provided by the Act, or unless there be something either in the subject or context repugnant to such construction.

Magistrate of Police.

2. *First.*—The words "Magistrate of Police" shall denote any person exercising the powers of a Magistrate of Police within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras for the time being.

"Town of Madras."

Second.—The words "Town of Madras" shall denote such places as are within the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Madras.

(1) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

Repeal of Act not to revive laws repealed thereby.

3. Where any Act, repealing in whole or in part any former enactment, is itself repealed such last repeal shall not revive the enactment, or any of the provisions thereof, before repealed, unless words be added reviving such enactment or provisions.

Matters prior to repeal unaffected.

4. The repeal of any Act or Regulation shall not affect any act which shall have been done, or any offence which shall have been committed, or any fine or penalty which shall have been incurred, or any proceedings which shall have been commenced, before the repealing Act shall have come into operation.

Commencement of future Acts.

5. Where in any future [2][Madras Act] no time is mentioned at which the same shall come into operation, such Act shall take effect from such date as the Governor in Council may notify by publication in the [2][Official Gazette].

6. & 7. [*Judicial notice of Madras Acts; recital of public fact to be* prima facie *evidence of its truth.*] *Rep. by the Repealing and Amending Act*, 1874 (*XIV of* 1874).

Short title.

8. This Act may be cited for all purposes as the Madras General Clauses Act, 1867.

THE MADRAS GENERAL CLAUSES ACT (I OF 1891).

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THE MADRAS GENERAL CLAUSES ACT (I OF 1891).

[*3rd April*, 1891; *14th May*, 1891.

An Act for further shortening the language used in Acts of the Governor of Fort St. George in Council and for other purposes.

[*N.B.* Amended by Madras Acts II of 1896; XI of 1920 and IV of 1937.]

WHEREAS it is expedient to further shorten the language used in Acts made by the Governor of Fort St. George in Council and to make certain further provisions relating to those Acts; It is hereby enacted as follows:—

Short title. Commencement.

1. (*a*) This Act may be called THE MADRAS GENERAL CLAUSES ACT, 1891; and

(*b*) It shall come into force on the first day of January, 1892.

Saving clause.

2. Notwithstanding anything contained in the Madras General Clauses Act, 1867,[3-6] the provisions of that Act shall not apply

(3-6) Mad. Act I of 1867.

to this Act or to any [7][Madras Act] which may be passed subsequently to the commencement of this Act.

CHAPTER I.

DEFINITIONS.

Definitions.

3. In this Act and in every [7][Madras Act] after the commencement of this Act, unless there be something repugnant in the subject or context,—

"Abet."

(1) "abet" with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code:[8]

"Barrister."

(2) "barrister" shall mean a barrister of England or Ireland or a member of the Faculty of Advocates in Scotland:

(3) [9][* *].

"Chapter," "part," "section" and "schedule."

(4) "Chapter," "part," "section" and "schedule" shall mean respectively a Chapter, part and section of, and schedule to, the Act in which the word occurs:

"City of Madras."

(5) "City of Madras" shall mean such local area as is declared from time to time to be the City of Madras under any Act for the time being in force relating to the municipal affairs of such city:

"Collector."

(6) "Collector" shall include every officer who, for the time being, is authorized to exercise the powers of a Collector:

"Commencement."

(7) "Commencement," used with reference to an Act, shall mean the time at which the Act comes into force:

"District Collector."

(8) "District Collector" shall mean the chief local officer in charge of the revenue-administration of a district:

"Document."

(9) "document" shall mean any matter expressed or described upon any substance by means of letters, figures or marks, or by more

(7) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(8) Act XLV of 1860.

(9) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

than one of those means, intended to be used, or which may be used, as evidence of that matter:

"Financial year." (10) "financial year" shall mean the year commencing on the first day of April:

"Good faith." (11) nothing is said to be done or believed in "good faith" which is done or believed without due care and attention:

(12) [9-a][* *].

"Her Majesty." (13) "Her Majesty" shall include Her heirs and successors to the Crown;

"Immovable property." (14) "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth:

"Imprisonment." (15) "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code:

(15-A) [9-a][* *].

"Judicial proceeding." (16) "judicial proceeding" shall mean any proceeding in the course of which evidence is, or may be, legally taken:

"Local authority." (17) "local authority" shall mean a Municipal Committee, District Board, Body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund:

[10][(17-A) "Madras Act" shall mean an Act made by the Governor of Fort St. George in Council under the Indian Councils Act, 1861 to 1909 to any of those Acts, or the Government of India Act, 1915, or by the Local Legislature or the Governor of the Presidency of Madras, under the Government of India Act, or by the Provincial Legislature or

(9-a) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

(10) Inserted by *ibid.*

the Governor of Madras under the Government of India Act, 1935.].

"Magistrate."

(18) "Magistrate" shall mean any person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure, 1882:"

"Movable property."

(19) "movable property" shall mean property of every description except immovable property:

"Oath," "swear" and "affidavit."

(20) "oath," "swear" and "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing:

"Offence."

(21) "offence" shall mean any act or omission made punishable by any law for the time being in force:

"Person."

(22) "person" shall include any company or association of individuals, whether incorporated or not:

"Place."

(23) "place" includes also a house, building, tent and vessel:

(24) [12][* *].

"Presidency-town."

(25) "Presidency-town" shall mean the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Madras:

"Public."

(26) "public" includes any class of the public or any community:

"Public nuisance."

(27) "public nuisance" shall have the meaning assigned to that expression in S. 268 of the Indian Penal Code:

"Registered."

(28) "registered" shall mean registered in British India under the law for the time being in force for the registration of documents:

"Sign."

(29) "sign," with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his

(11) Act X of 1882. *See* now Act V of 1898.

(12) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

name, include "mark" with its grammatical variations and cognate expressions:

"Son" and "father."

(30) in the case of any one whose personal law permits adoption, "son" shall include an adopted son, and "father" an adoptive father:

"Sub-section."

(31) "sub-section" shall mean a sub-section of the section in which the word occurs:

"Value."

(32) "value," used with reference to a suit, shall mean the amount or value of the subject-matter of the suit, computed according to the law for the time being in force regulating the valuation of suits for purposes of jurisdiction:

"Will."

(33) "will" shall include a codicil and every writing making a voluntary posthumous distribution of property:

Gender.

(34) words importing the masculine gender shall include females:

Number.

(35) words in the singular shall include the plural, and words in the plural shall include the singular.

Illegal omissions.

(36) words which refer to acts done extend also to illegal omissions:

"Writing."

(37) "writing," with its grammatical variations and cognate expressions, shall include "printing," "lithography," "photography," with their grammatical variations and cognate expressions, and other modes of representing or reproducing words in a visible form:

"Year" and "month."

(38) "year" and "month" shall, respectively, mean a year and month reckoned according to the British calendar.

CHAPTER II.

General Provisions applicable to future Acts.

Application of Chapter II to all future Acts.

4. The Chapter shall apply to all [13-14][Madras Acts] after the commencement of this Act, unless a contrary intention appears in such Acts.

(13-14) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

Commencement of future Acts.

5. [15][(1) Where any Act to which this chapter applies is not expressed to come into operation on a particular day, then it shall come into operation, if it is an Act of the Legislature, on the day on which, the assent thereto of the Governor, the Governor-General or His Majesty, as the case may require, is first published in the Official Gazette, and if it is an Act of the Governor, on the day on which it is first published as an Act in the Official Gazette.

(2) In every such Act the date of such publication as aforesaid shall be printed either above or below the title of the Act and shall form part of the Act.]

Making of rules and issue of orders between passing and commencement of Acts.

6. Where, by an Act to which this Chapter applies and which is not to come into force immediately on the passing thereof, a power is conferred on Government or other authority to make rules, or to issue orders with respect to the application of the Act, or with respect to the appointment of any officer thereunder, such power may be exercised at any time after the passing of the Act, but rules or orders so made or issued shall not take effect till the commencement of the Act.

Provisions regulating the making of rules after previous publication.

7. Where, by an Act to which this Chapter applies, a power to make rules is expressed to be given; subject to the conditions of rules being made after previous publication, the following provisions shall apply, namely:—

Publication of draft rules.

(*a*) the authority having the power to make the rules shall, before making them, publish a draft of the proposed rules;

Manner of publication.

(*b*) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the [15][Central Government or, as the case may be, the Provincial Government.].

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(15) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

Notice to accompany draft rules.

(*c*) there shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration;

Consideration of suggestion in regard to draft rules.

(*d*) the authority having power to make the rules, and, where the rules are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules from any person with respect to the draft, before the date so specified;

Publication to be proof of due making of rules.

(*e*) the publication in the [16][Official Gazette] of a rule purporting to have been made in exercise of a power to make rules after previous publication, shall be conclusive proof that the rule has been duly made.

Effect of repealing an Act.

8. Where any Act, to which this Chapter applies repeals any other enactment, then the repeal shall not—

(*a*) affect anything done or any offence committed, or any fine or penalty incurred or any proceedings begun before the commencement of the repealing Act; or

(*b*) revive anything not in force or existing at the time at which the repeal takes effect; or

(*c*) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

(*d*) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(*e*) affect any fine, penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(*f*) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, fine, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be insti-

(16) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

tuted, continued or enforced, and any such fine, penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

[17][8-A. Where any Act to which this Chapter applies, repeals any enactment by which the text of any previous enactment was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.]

Effect of repeal of Act making textual amendment in previous Act.

Revival of repealed enactments.

9. In any Act to which this Chapter applies—

(*a*) for the purpose of reviving, either wholly or partially, an Act or Regulation, wholly or partially repealed, it shall be necessary expressly to state such purpose:

Commencement of term.

(*b*) for the purpose of excluding first in a series of days or any other period of time, it shall be sufficient to use the word "from".

Termination of term.

(*c*) for the purpose of including the last in a series of days or any other period of time, it shall be sufficient to use the word "to";

Application to subordinates of law relative to official superiors.

(*d*) for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully executing the duties of such office in the place of their superior, shall be sufficient to prescribe the duty of the superior;

Application of law to successors of functionaries and corporations.

(*e*) for the purpose of indicating the relation of a law to the successors of any functionaries, or of corporations having perpetual succession, it shall be sufficient to express its relation to the functionaries or corporations; and

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(17) Section 8-A inserted by Madras Act IV of 1937.

(*f*) for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, it shall be sufficient to mention the official title of the officer at present executing such functions, or that of the officer by whom the functions are commonly executed.

Application of law to persons for time being filling an office.

10. Where an Act, to which this Chapter applies, confers power to make rules or by-laws or to issue orders, expressions used in such rules, by-laws or orders, have the same respective meanings as in the Act conferring the power.

Expressions used in by-laws and orders to have same meaning as in Act under which they are made or issued.

11. Where, by an Act to which this Chapter applies, any act or proceeding is directed or allowed to be done or taken in a Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

Necessary extension of prescribed periods.

This section does not apply to any act or proceeding to which the Indian Limitation Act, 1877,[18]

CHAPTER III.

General Provisions applicable to all Acts.

12. This Chapter shall apply to all[19][Madras Acts] unless a contrary intention appears in any such Act, but it shall not affect anything done or commenced prior to the commencement of this Act under any enactment now in force.

Application of Chapter III to all Acts.

13. Where an Act confers a power or imposes a duty, then the power may be exercised and the duty shall be performed from time to time as occasion requires.

When powers and duties to be exercised and performed.

(18) *See* now Act IX of 1908.

(19) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

Exercise of power and performance of duty by temporary holder of office.

14. Where an Act confers a power or imposes a duty on the holder of an office, as such, then the power may be exercised and the duty shall be performed by the holder for the time being of the office.

Revocation and alteration of rules, by-laws and orders.

15. Where an Act confers a power to make any rules or by-laws, or to issue orders, the power shall be construed as including a power exercisable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend or vary the rules, by-laws or orders.

Duty leviable *pro rata*.

16. Whenever by an Act any duty of customs or excise or in the nature thereof is leviable on any given quantity, by weight, measure or value, of any goods or merchandise, a like duty shall be leviable, according to the same rate on any greater or less quantity.

Mode of conferring powers and imposing duties.

17. Whenever by an Act authority is given to confer powers or impose duties, such powers may be conferred or duties imposed by name or by office or on classes of officials generally by their official titles.

References to provisions in Acts repealed and re-enacted.

18. Where an Act repeals and re-enacts, with or without modification, all or any of the provisions of a former Act, references in any other Act to provisions so repealed shall be construed as references to the provisions so re-enacted, and if notifications have been published, proclamations or certificates issued, powers conferred, forms prescribed, local limits defined, offices established, orders, rules and appointments made, engagements entered into licences or permits granted, and other things duly done, under the provisions so repealed, the same shall be deemed, so far as the same are consistent with the provisions so re-enacted, to have been respectively published, issued, conferred, prescribed, defined established, made, entered into, granted or done under the provisions so re-enacted.

Recovery of fines.

19. The provisions of Ss. 63, 68, 69, and 70 of the Indian Penal Code shall apply to all fines imposed under the authority of any Act.

Punishment for offences under more than one enactment.

20. Where an act or omission constitutes an offence under two or more enactments, the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same act or omission.

Publication of orders and notifications in the Official Gazette.

21. Where in any Act, or in any rule passed under any Act, it is directed that any order, notification or other matter shall be notified or published, such notification or publication shall, unless the Act otherwise provides, be deemed to be duly made if it is published in the [20][Official Gazette.]

Determination of the times at which Acts or provisions of Acts extended or applied by Government to certain places shall come into force.

22. When, by an Act, [21][any Government] is empowered to extend or apply an Act or any provision of an Act to any place, in, or to any portion of, the [21][Province] the Government may, in any order extending or applying such Act or provision or in a subsequent order, notify the time at which the same shall come into force in the place or portion of the [21][Province] to which it is so extended or applied; and, unless it is otherwise provided in the Act, [21][the Government] may, by notification in the [21][Official Gazette] from time to time postpone the time at which the Act or provision shall come into force in such place or portion of the [21][Province] or cancel the order for extending or applying the same to such place or portion of the [21][Province]:

Proviso.

Provided that no order postponing the time at which an Act or provision shall come into force, or cancelling an order for extending or applying the same, shall be made after the Act or provision has actually come into force in the place or portion of the [21][Province] to which such order relates.

(20-21) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

[22]CHAPTER IV.

APPLICATION TO ORDINANCES AND REGULATIONS.

23. The provisions of this Act shall apply—

(*a*) in relation to any Regulation made by the Government of Madras under S. 92 of the Government of India Act, 1935, as they apply in relation to Madras Acts made by the Provincial Legislature; and

(*b*) in relation to any ordinance promulgated by the Governor under S. 88 or S. 89 of the said Act, as they apply in relation to Acts made under that Act by the Governor.

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(22) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

APPENDIX F.

THE UNITED PROVINCES GENERAL CLAUSES ACT (I OF 1904).

Historical Memoir.

Year.	No. of Act.	Name of Act.	How affected.
1887	I	U. P. General Clauses Act ..	Rep., U. P. Act I of 1904.
1896	I	General Clauses amending U. P. Act I of 1887.	Rep., U. P. Act I of 1904.
1904	I	U. P. General Clauses Act ..	

[28*th November*, 1903; 7*th January*, 1904.

An Act to consolidate and extend the North-Western Provinces and Oudh General Clauses Acts, 1887 *and* 1896.

Whereas it is expedient to consolidate and extend the North-Western Provinces and Oudh General Clauses Acts, 1887 and 1896; it is hereby enacted as follows:—

Preliminary.

Short title and commencement.

1. (1) This Act, may be called THE UNITED PROVINCES GENERAL CLAUSES ACT, 1904; and

(2) It shall come into force at once.

Repeal.

2. The Acts mentioned in the schedule are repealed to the extent specified in the fourth columns thereof.

Applications of Act to other enactments.

3. The provisions of Ss. 4 to 28 shall apply to this Act and to all United Provinces Acts, whether made before or after the commencement of this Act.

General Definitions.

Definitions.

4. In all United Provinces Acts, unless there is anything repugnant in the subject or context,—

"Abet".

(1) "abet" with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code;

"Act".

(2) "act" used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions;

"Affidavit".

(3) "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;

"Agra".

(4) "Agra" shall mean the territories known as the North-Western Provinces previously to the 22nd day of March, 1902;

"Assistant Collector".

(5) "Assistant Collector" shall include an Assistant Commissioner;

"Barrister".

(6) "barrister" shall mean a barrister of England or Ireland or a member of the Faculty of Advocates in Scotland;

"Board of Revenue".

(7) "Board of Revenue" shall mean the Board of Revenue for the United Provinces;

"Chapter".

(8) "Chapter" shall mean a Chapter of the Act in which the word occurs;

"Collector".

(9) "Collector" shall mean the Chief Officer in charge of the Revenue administration of a District and shall include a Deputy Commissioner and the Superintendent, Dehra Dun;

"Commencement".

(10) "Commencement" and with reference to an Act, shall mean the day on which the Act, comes into force;

"Commissioner".

(11) "Commissioner" shall mean the Chief Officer in charge of the revenue administration of a division;

"District Judge".

(12) "District Judge" shall mean the Judge of a Principal Civil Court of original jurisdiction but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;

"Document".

(13) "document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks or by

more than one of those means, which is intended to be used, or which may be used, for the purpose of recording that matter;

"Enactment". (14) "enactment" shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid;

"Father". (15) "father" in the case of any one whose personal law permits adoption, shall include an adoptive father;

"Financial year". (16) "financial year" shall mean the year commencing on the first day of April;

"Good faith". (17) a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not;

"Gazette". (18) "Gazette" shall mean the official Gazette for the United Provinces;

[1](19) [* * * *]

"Growing crops". (20) "growing crops" shall include crops of all sorts attached to the soil, and leaves, flowers and fruits upon, and juice in trees and shrubs;

[1](21) [* * * *]

"His Majesty" or "the King". (22) "His Majesty" or "the King" shall include his successors;

"Immovable property". (23) "immovable property" shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth, but shall not include standing timber, growing crops or grass;

"Imprisonment". (24) "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code;

"Local Authority". (25) "local authority" shall mean a municipal board, district board or other authority legally entitled to, or entrusted by the [2][Provincial Government] with, the control or management of a municipal or local fund;

(1) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

(2) Substituted by *Ibid.*

[3](26) [* * * *]

(27) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force;

"Magistrate".

(28) "month" shall mean a month reckoned according to the British Calendar;

"Month".

(29) "movable property" shall mean property of every description, except immovable property;

"Movable property".

(30) "oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;

"Oath".

(31) "offence" shall mean any act or omission made punishable by any law for the time being in force;

"Offence".

(32) "Part" shall mean a part of the Act or Regulation in which the word occurs;

"Part".

(33) "person" shall include any company or association or body of individuals, whether incorporated or not;

"Person".

(34) "public nuisance" shall mean a public nuisance as defined in the Indian Penal Code;

"Public nuisance".

(35) "registered" used with reference to a document shall mean registered in British India under the law for the time being in force for the registration of documents.

"Registered".

(36) "Regulation" shall mean a Regulation made under the Government of India Act, 1870;

"Regulation".

(37) "rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment;

"Rule".

---

(3) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

"Schedule". (38) "schedule" shall mean a schedule to the Act or Regulation in which the word occurs;

"Scheduled District". (39) "Scheduled District" shall mean a "Scheduled District" as defined in the Scheduled Districts Act, 1874;

"Section". (40) "section" shall mean a section of the Act or Regulation in which the word occurs;

"Sign". (41) "sign" with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark" with its grammatical variations and cognate expressions;

"Son". (42) "son" in the case of any one whose personal law permits adoption, shall include an adopted son;

"Sub-section". (43) "sub-section" shall mean a sub-section of the section in which the word occurs;

"Swear". (44) "swear" with its grammatical variations and cognate expressions shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing;

"United Provinces". (45) "United Provinces" shall mean the United Provinces of Agra and Oudh;

"United Provinces Act". (46) "United Provinces Act" shall mean an Act, made by the Lieutenant Governor of the North-Western Provinces and Oudh (or of the United Provinces of Agra and Oudh) in Council under the Indian Councils Acts, 1861 and 1892; [4][or the Indian Councils Acts, 1861 to 1909, or the Government of India Act, 1915, or by the Local Legislature or the Governor of the United Provinces under the Government of India Act, or by the Provincial Legislature or the Governor of the United Provinces under the Government of India Act, 1935];

"Vessel". (47) "vessel" shall include any ship or boat or any other description of vessel used in navigation:

(4) Inserted by Government of India (Adaptation of Indian Laws), Order, 1937.

"Will". (48) "will" shall include a codicil and every writing making a voluntary posthumous disposition of property;

"Writing". (49) expressions referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form; and

"Year". (50) "year" shall mean a year reckoned according to the British Calendar.

General rules of Construction.

Coming into operation of enactments. **5.** (1) Where any United Provinces Act is not expressed to come into operation on a particular day, then it shall come into operation [5][If it is an Act of the Legislature, on the day on which the assent thereto of the Governor, the Governor-General or His Majesty, as the case may require, is first published in the Official Gazette and if it is an Act of the Governor, on the day on which it is first published as an Act in the Official Gazette].

(2) Unless the contrary is expressed, a United Provinces Act shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

Effect of repeal. **6.** Where any United Provinces Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(*a*) revive anything not in force or existing at the time at which the repeal takes effect; or

(*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(*c*) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(*d*) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(*e*) affect any remedy or any investigation or legal proceeding commenced before the repealing Act, shall have come into

(5) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

operation in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such remedy may be enforced and any such investigation or legal proceeding may be continued and concluded and any such penalty, forfeiture or punishment imposed as if the repealing Act had not been passed.

Revival of repealed enactments.

7. In any United Provinces Act it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed expressly to state that purpose.

Construction of references to repealed enactments.

8. Where any United Provinces Act repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Commencement and termination of time.

9. In any United Provinces Act, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

Computation of time.

10. Where by any United Provinces Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the Act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, on which the Court or office is open:

Provided that nothing in this section shall apply to any Act or proceeding to which the Indian Limitation Act, 1877, applies.

Measurement of distances.

11. In the measurement of any distance, for the purpose of any United Provinces Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

Duty to be taken *pro rata* in enactments.

12. Where, by any United Provinces Act, any duty or customs or excise, or in the nature thereof is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

Gender and number.

13. In all United Provinces Acts, unless there is anything repugnant in the subject or context,—

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural and *vice versa*.

Powers and Functionaries.

Powers conferred on the Government to be exercisable from time to time.

14. Where by any United Provinces Act, any power is conferred on the [6][Provincial Government], then that power may be exercised from time to time as occasion requires.

Power to appoint to include power to appoint *ex officio*.

15. Where, by any United Provinces Act, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment may be made either by name or by virtue of office.

Power to appoint to include power to suspend or dismiss.

16. Where by any United Provinces Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power.

Substitution of functionaries.

17. In any United Provinces Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

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(6) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

Successors.

18. In any United Provinces Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

Official chiefs and subordinates.

19. In any United Provinces Act, it shall be sufficient, for the purpose of expressing that a law relative to the Chief or Superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

Provisions as to Orders, Rules, etc., made under Enactments.

Construction of orders, etc., issued under enactments.

20. Where, by any United Provinces Act, a power to issue any notification, order, scheme, rule, form or by-law is conferred, then expressions used in the notification, order, scheme, rule, form or by-law shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act conferring the power.

Power to make to include power to add to, amend, vary or rescind, orders, rules or by-laws.

21. Where by any United Provinces Act, a power to issue notifications, orders, rules or by-laws is conferred then the power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules, or by-laws so issued.

Making of rules or by-law and issuing of orders between publication and commencement of enactment.

22. Where, by any United Provinces Act, which is not to come into force on the day on which it is first published in the Gazette, a power is conferred to make rules or by-laws, or to issue orders with respect to the application of the Act or with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act, then that power may be exercised at any time after the Act has been published as aforesaid; but rules, by-laws or orders so made or issued shall not take effect till the commencement of the Act.

Provisions applicable to making of rules, or by-laws after previous publication.

23. Where by any United Provinces Act, a power to make rules or by-laws is expressed to be given subject to the condition of the rules or by-laws being made after previous publication, then the following provisions shall apply, namely :—

(1) the authority having power to make the rules or by-laws shall, before making them, publish a draft of the proposed rules or by-laws for the information of persons likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the [7][Provincial Government] prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or by-laws, and where the rules, or by-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or by-laws from any person with respect to the draft before the date so specified;

(5) the publication in the Gazette of a rule or by-law purporting to have been made in exercise of a power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law has been duly made.

Continuation of appointments, notifications, orders, etc., issued under enactments repealed and re-enacted.

24. Where any enactment is repealed and re-enacted by a United Provinces Act with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or by-law made or issued under the repealed enactment shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or by-law made or issued under the provisions so re-enacted.

(7) Substituted by Government of India (Adaptation of Indian Laws) Order 1937.

Miscellaneous.

Recovery of fines.

25. Sections 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any United Provinces Act, unless the Act, rule or bye-law contains an express provision, to the contrary.

Provision as to offences punishable under two or more enactments.

26. Where an act or omission constitutes an offence under two or more United Provinces Acts, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

Meaning of service by post.

27. Where any United Provinces Act authorises or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Citation of enactments.

28. (1) In any United Provinces Act, and in any rule, by-law, instrument or document, made under, or with reference to any such Act, any enactment may be cited by reference to the title or short title (if any) conferred thereon, or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

(2) In citing any United Provinces Act, made previously to the 22nd day of March, 1902, the words "United Provinces" may be substituted for the words "North Western Provinces and Oudh", and the word "Agra" for the words "North Western Provinces" in the title or short title (if any) conferred thereon.

(3) In any United Provinces Act a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

References in existing enactments to North Western Provinces and Oudh.

29. In all Acts or Regulations of the Governor-General and all United Provinces Acts heretofore passed and now in force, and in every appointment, order, scheme, rule, by-law, notification or form made or issued thereunder, all references to the North Western Provinces and Oudh shall be construed as referring to the United Provinces [8][* * *] all references to the North Western Provinces and to the Provinces of Oudh, respectively, shall be construed as referring to the corresponding territories as comprised in the United Provinces of Agra and Oudh [9][and all references to the Lieutenant-Governor of the North Western Provinces or the Chief Commissioner of Oudh or the Lieutenant-Governor of the North Western Provinces and Oudh in Council shall be construed as referring to the Provincial Government of the United Provinces] :

Application to Ordinances and Regulations under the Government of India Act, 1935.

[10]30. The provisions of this Act shall apply—

(*a*) in relation to any Regulation made by the Governor of the United Provinces under S. 92 of the Government of India Act, 1935, as they apply in relation to Acts made by the Provincial Legislature of the United Provinces; and

(*b*) in relation to any Ordinance promulgated by the Governor under S. 88 or S. 89 of the said Act, as they apply in relation to Acts made under that Act by the Governor.]

THE SCHEDULE.

ENACTMENTS REPEALED.

(*See* Section 2.)

Year.	No.	Title or subject.	Extent of repeal.
1887	I	The North-Western Provinces and Oudh General Clauses Act, 1887.	The whole.
1896	I	The General Clauses Amendment Act, 1896.	The whole.

(8) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

(9) Substituted by *ibid.*

(10) Added by *ibid.*

APPENDIX G.

THE PUNJAB GENERAL CLAUSES ACT (I OF 1898).

Acts of the Local Legislature of the Punjab in force in the Punjab and in the North-West Frontier Province.

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THE PUNJAB GENERAL CLAUSES ACT (I OF 1898).

[11*th May*, 1898 *and* 15*th July*, 1898.

An Act to shorten the language of Acts and for other matters.

WHEREAS it is expedient to shorten the language used in Acts made by the Lieutenant-Governor of the Punjab in Council, and to make certain provisions for the construction of and other matters relating to, such Acts; It is hereby enacted as follows:—

PRELIMINARY.

Short title and commencement.

1. (1) This Act may be called THE PUNJAB GENERAL CLAUSES ACT, 1898; and

(2) It shall come into force at once.

GENERAL DEFINITIONS.

Definitions.

2. In this Act, and in [1][all Punjab Acts] unless there is anything repugnant in the subject or context,—

Abet.

(1) "abet," with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code;

Act.

(2) "act," used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions:

Affidavit.

(3) "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;

Barrister.

(4) "[2-3]barrister" shall mean a barrister of England or Ireland or a member of the Faculty of Advocates in Scotland:

(1) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(2-3) As to legal practitioners in the North-West Frontier Provinces, *see* S. 9 of Reg. VII of 1901, Vol. III.

(5) [4][* * * *]

(6) "British possession" shall mean any part of Her Majesty's dominions, exclusive of the United Kingdom, and were parts of those dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession :

British possession.

(7) "Chapter" shall mean a Chapter of the Punjab Act in which the word occurs.

Chapter.

(8) [4][* * * *]

(9) "Collector" shall mean the chief officer in charge of the revenue-administration of a district and shall include a Deputy Commissioner :

Collector.

(10) "Colony" shall mean any part of Her Majesty's dominions exclusive of the British Islands, and of British India, and, where parts of those dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony :

Colony.

[5][Provided that in any Punjab Act, passed after the commencement of Part III of the Government of India Act, 1935, 'Colony' shall not include any dominion as defined in the Statute of Westminster, 1931, any Province or State forming part of such a Dominion, or British Burma] :

(11) "Commencement," used with reference to a Punjab Act, shall mean the day on which the Act comes into force :

Commencement.

(12) [6]"Commissioner" shall mean the chief officer in charge of the revenue and general administration of a division :

Commissioner.

(13) "consular officer" shall include consul-general, consul, vice-consul, consular agent, pro-consul, and any person for the time being authorized to perform the duties of consul-general, consul, vice-consul or consular agent :

Consular Officer.

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(4) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

(5) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

(6) In the North-West Frontier Province this reference is to be construed as referring to the Revenue Commissioner, *see* S. 6 (1) (*f*) of Regulation VII of 1901.

Deputy Commissioner.

(14) "Deputy Commissioner" shall mean the chief officer in charge of the general administration of a district:

District Judge.

(15) [7]["District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction; but shall not include the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction:]

Document.

(16) "document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, which is intended to be used, or which may be used, for the purpose of recording that matter:

Enactment.

(17) "enactment" shall include any provision contained in any Punjab Act:

Father.

(18) "father," in the case of any one whose personal law permits adoption, shall include an adoptive father:

Financial Commissioner.

(19) [8]"Financial Commissioner" shall mean the Financial Commissioner of the Punjab for the time being:

Financial year.

(20) "Financial year" shall mean the year commencing on the first day of April:

(21) [9][* * * *]

Good faith.

(22) a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not:

Government.

(23) "Government" or "the Government" shall include the [10][Provincial Government] as well as the [10][Central Government]:

(24) [9][* * * *]

Her Majesty or the Queen.

(25) "Her Majesty" or "the Queen" shall include Her successors:

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(7) Substituted by the Punjab Courts Act (VI of 1918), S. 50.

(8) In the North-West Frontier Province references to the "Financial Commissioner" are to be construed as referring to the "Revenue Commissioner", *see* S. 6 (1) (*c*) of the North-West Frontier Province Law and Justice Regulation, 1901 (VII of 1901).

(9) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

(10) Substituted by *ibid.*

(26) "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth :

Immovable property.

(27) "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code :

Imprisonment.

(28) [11][* * * *]

(29) [11][* * * *]

(30) "local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund :

Local authority.

(31) [11][* * * *]

(32) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force :

Magistrate.

(33) "Master," used with reference to a ship, shall mean any person (except a pilot or harbour-master) having for the time being control or charge of the ship :

Master (of a ship).

(34) "month" shall mean a month reckoned according to the British calendar :

Month.

(35) "Movable property" shall mean property of every description except immovable property :

"Movable property."

(36) "notification" shall mean a notification published under proper authority in the [12][Official Gazette] :

Notification.

(37) "oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing :

Oath.

---

(11) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

(12) Substituted by *ibid.*

Offence. (38) "offence" shall mean any act or omission made punishable by any law for the time being in force:

Part. (39) "Part" shall mean a Part of the Punjab Act in which the word occurs:

Person. (40) "person" shall include any company or association or body of individuals, whether incorporated or not:

Political Agent. (41) "Political Agent" shall include—

(*a*) the principal officer representing the [13][Crown] in any territory or place beyond the limits of British India, and

(*b*) any officer [14][* *] appointed to exercise all or any of the powers of a Political Agent for any place not forming part of British India under the law for the time being in force relating to foreign jurisdiction[14][* *]:

Privy Council. (42) "Privy Council" shall mean the Lords and others for the time being of Her Majesty's Most Honourable Privy Council.

Province. (43) "Province" shall mean the territories for the time being administered by any [13][Provincial Government]:

Public nuisance. (44) "public nuisance" shall mean a public nuisance as defined in the Indian Penal Code.

(45) [14][* * *]

Punjab Act. [13][(46) 'Punjab Act' shall mean an Act made by the Lieutenant-Governor of the Punjab in Council under the Indian Councils Acts, 1861 to 1909, or any of those Acts, or the Government of India Act, 1915, or by the Local Legislature, or the Governor of the Punjab under the Government of India Act, or by the Provincial Legislature or the Governor of the Punjab under the Government of India Act, 1935.

Registered. (47) "registered," used with reference to a document, shall mean registered in British India under the law for the time being in force for the registration of documents:

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(13) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(14) Omitted by *ibid.*

Rule.

(48) "rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment:

Schedule.

(49) "schedule" shall mean a schedule to the Punjab Act in which the word occurs:

Scheduled district.

(50) "scheduled district" shall mean a "scheduled district" as defined in the Scheduled Districts Act, 1874.

Section.

(51) "Section" shall mean a section of the Punjab Act in which the word occurs:

Ship.

(52) "ship" shall include every description of vessel used in navigation not exclusively propelled by oars:

Sign.

(53) "sign," with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark," with its grammatical variations and cognate expressions:

Son.

(54) "son," in the case of any one whose personal law permits adoption, shall include an adopted son:

Sub-section.

(55) "sub-section" shall mean a sub-section of the section in which the word occurs:

Swear.

(56) "swear," with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing:

Vessel.

(57) "vessel" shall include any ship or boat or any other description of vessel used in navigation:

Will.

(58) "will" shall include a codicil and every writing making a voluntary posthumous disposition of property:

Writing.

(59) expressions referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form: and

Year.

(60) "year" shall mean a year reckoned according to the British calendar.

General Rules for Construction.

Coming into operation of enactments.

3. Where any Punjab Act is not expressed to come into operation on a particular day, then, it shall come into operation [15][if it is an Act of the Legislature, on the day on which the assent thereto of the Governor, the Governor-General or His Majesty, as the case may require, is first published in the Official Gazette, and if it is an Act of the Governor, on the day on which it is first published as an Act in the Official Gazette], and in every such Act the date of the first publication thereof shall be printed either above or below the title of the Act and shall form part of every such Act.

Effect of repeal.

4. Where this Act or any Punjab Act repeals any enactment then, unless a different intention appears, the repeal shall not—

(*a*) revive anything not in force or existing at the time at which the repeal takes effect; or

(*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(*c*) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(*d*) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(*e*) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Repealing Act had not been passed.

Revival of repealed enactments.

5. In any Punjab Act it shall be necessary, for the purpose of reviving either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

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(15) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

Construction of reference to repealed enactments.

6. Where this Act, or any other Punjab Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Commencement and termination of time.

7. In any Punjab Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from" and, for the purpose of including the last in a series of days or any other period of time, to use the word "to."

Computation of time.

8. Where, by any Punjab Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877[16], applies.

Measurement of distance.

9. In the measurement of any distance, for the purposes of any Punjab Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

Duty to be taken *pro rata* in enactments.

10. Where, by any enactment now in force or hereafter to be in force, any duty of customs or excise, or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandize, then a like duty is leviable according to the same rate on any greater or less quantity.

Gender and number.

11. In all Punjab Acts, unless there is anything repugnant in the subject or context,—

(1) words importing the masculine gender shall be taken to include females; and

(16) *See* now the Indian Limitation Act (IX of 1908), General Acts, Vol. VI.

(2) words in the singular shall include the plural, and *vice versa*.

Powers and Functionaries.

Power conferred on the Government to be exercisable from time to time.

12. Where, by any Punjab Act, any power is conferred on the [17][Provincial Government] then that power may be exercised from time to time as occasion requires.

Power to appoint to include power to appoint *ex-officio*.

13. Where, by any Punjab Act, any power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment may be made either by name or by virtue of office.

Power to appoint to include power to suspend or dismiss.

14. Where, by any Punjab Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power.

Substitution of functionaries.

15. In any Punjab Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

Successors.

16. In any Punjab Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

Official chiefs and subordinates.

17. In any Punjab Act, it shall be sufficient, for the purpose of expressing that a law relative to the Chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

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(17) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

Provisions as to Orders, Rules, etc., made under Enactments.

Construction of orders, etc., issued under enactments.

18. Where, by any Punjab Act, a power to issue any order, scheme, rule, form, or bye-law is conferred, then expressions used in the order, scheme, rule, form or bye-law shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act conferring the power.

Power to make to include power to add to, amend, vary or rescind orders, rules or bye-laws.

19. Where, by any Punjab Act, a power to make orders, rules or bye-laws is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any orders, rules or bye-laws so made.

Making of rules or bye-laws and issuing of orders between passing and commencement of enactment.

20. Where, by any Punjab Act, which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act, or with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act, then that power may be exercised at any time after the passing of the Act, but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act.

Provisions applicable to making of rules or bye-laws after previous publication.

21. Where, by any Punjab Act, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then, unless such Act otherwise provides, the following provisions shall apply, namely:—

(1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby:

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect

to previous publication so requires, in such manner as the [18][Provincial Government] prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(5) the publication in the [18][Official Gazette] of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

Continuation of orders, etc., issued under enactments repealed and re-enacted.

22. Where any Punjab Act is repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any order, scheme, rule, form or bye-law, issued under the repealed Act, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been issued under the provisions so re-enacted, unless and until it is superseded by any order, scheme, rule, form or bye-law issued under the provisions so re-enacted.

Miscellaneous.

Recovery of fines.

23. Sections 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, rule or bye-law, unless the Act, rule or bye-law contains an express provision to the contrary.

Provision as to offences punishable under two or more enactments.

24. Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

(18) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

Meaning of service by post.

25. Where any Punjab Act authorises or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and, unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Citation of enactments.

26. (1) In any Punjab Act and in any rule, bye-law, instrument or document, made under, or with reference to, any such Act, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

(2) In any Punjab Act a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

Application to Ordinances and Regulations under the Government of India Act, 1935.

[19][**27.** The provisions of this Act shall apply—

(*a*) in relation to any regulation made by the Governor of the Punjab under S. 92 of the Government of India Act, 1935, as they apply in relation to Acts made by the Provincial Legislature of the Punjab; and

(*b*) in relation to any ordinance promulgated by the Governor under S. 88 or S. 89 of the said Act, as they apply in relation to Acts made under that Act by the Governor.]

(19) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

APPENDIX H.

THE BIHAR AND ORISSA GENERAL CLAUSES ACT (I OF 1917).

An Act for shortening the language used in certain Acts in force in Bihar and Orissa and for other purposes.

WHEREAS it is expedient to provide for the interpretation of certain Acts in force, in Bihar and Orissa, for shortening the language used therein and for making certain other provisions relating to such Acts;

AND WHEREAS the previous sanction of the Governor-General has been obtained under S. 79 of the Government of India Act, 1915, to the passing of this Act;

It is hereby enacted as follows:—

PRELIMINARY.

Short title.

1. This Act may be called THE BIHAR AND ORISSA GENERAL CLAUSES ACT, 1917.

Repeal of Bengal Act I of 1899.

2. The Bengal General Clauses Act, 1899, so far as it applies to Bihar and Orissa, is hereby repealed.

Application of Act to other enactments.

3. The provisions of Ss. 4 and 6 to 32 shall apply to this Act and shall apply, and shall be deemed always to have applied, to all Bihar and Orissa Acts made whether before or after the commencement of this Act.

DEFINITIONS.

Definitions.

4. In all Bihar and Orissa Acts, [1][and Bihar Acts] unless there is anything repugnant in the subject or context—

"Abet".

(1) "abet" with its grammatical variations and cognate expressions shall have the same meaning as in the Indian Penal Code;

(1) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

"Act".

(2) "act" used with reference to an offence or a civil wrong, shall include a series of acts; and words which refer to acts done shall extend also to illegal omissions;

"Affidavit".

(3) "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;

"Barrister".

(4) "barrister" shall mean a barrister of England or Ireland or a member of the Faculty of Advocates in Scotland;

"Bengal Act".

(5) "Bengal Act" shall mean an Act made by the Lieutenant-Governor of Bengal in Council, under the Indian Councils Act, 1861 and 1892, or the Indian Councils Acts, 1861 to 1909;

"Bihar Act".

[2][(5-*a*) "Bihar Act" shall mean an Act made by the Provincial Legislature or the Governor of Bihar under the Government of India Act, 1935];

(6) [3][* *].

"Bihar and Orissa Act".

(7) "Bihar and Orissa Act" shall mean an Act made by the Lieutenant-Governor of Bihar and Orissa in Council under the Indian Councils Acts, 1861 to 1909, or the Government of India Act, 1915 [4][or by the Local Legislature or the Governor of Bihar and Orissa or of Bihar under the Government of India Act] and include—

(*i*) a Bengal Act made after the eighteenth day of January, 1899, which is still in force in Bihar and Orissa;

(*ii*) with respect to clauses (3), (32), (34), (37) and (54) of this section and in Ss. 6, 15, 19, 24, 25, 26, 29 and 32 (1), a Bengal Act made after the first day of June, 1867, which is still in force in Bihar and Orissa;

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(2) Cl. (5-*a*) newly added by Government of India (Adaptation of Indian Laws) Order, 1937.

(3) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

(4) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

(8) [5][* *].

(9) "British Possession" shall mean any part of His Majesty's dominions, exclusive of the United Kingdom, and, where parts of those dominions are under both a central and a local legislature, all parts under the Central Legislature shall, for the purposes of this definition, be deemed to be one British Possession;

"British possession".

(10) "Chapter" shall mean a Chapter of the Act which the word occurs;

"Chapter".

(11) "Collector" shall mean the Chief Officer in charge of the revenue administration of a district and shall include a Deputy Commissioner;

"Collector".

(12) "Commencement" used with reference to an Act, shall mean the day on which the Act comes into force;

"Commencement".

(13) "Commissioner" shall mean the Chief Officer in charge of the revenue administration of a division;

"Commissioner".

(14) "Consular Officer" shall include consul-general, consul, vice-consul, consular agent, pro-consul, and any person for the time being authorised to perform the duties of consul-general, consul, vice-consul or consular agent;

"Consular Officer".

(15) "District Court" shall mean the principal Civil Court of original jurisdiction of a District; but shall not include a High Court in the exercise of its ordinary or extra-ordinary original civil jurisdiction;

"District Court".

(16) "District Judge" shall mean the Judge of a District Court;

"District Judge".

(17) "Document" shall include any matter written, expressed or described upon any substance by means of letters, figures or

"Document".

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(5) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

marks, or by more than one of those means, which is intended to be used, or which may be used for the purpose of recording that matter;

"Enactment". (18) "Enactment" shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid;

"Father". (19) "Father" in the case of any one whose personal law permits adoption, shall include an adoptive father;

"Financial year." (20) "Financial year" shall mean the year commencing on the first day of April;

(21) [6][* *].

"Good faith". (22) a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not;

"Government". (23) "Government" or "the Government" shall include the [6-a][Provincial Government] as well as the [6-a][Central Government].

(24) [6][* *].

"High Court". (25) "High Court" used with reference to civil proceedings, shall mean the highest Civil Court of Appeal in the part of Bihar and Orissa, in which the Act containing the expression operates;

"His Majesty" or "the King". (26) "His Majesty" or "the King" shall include his successors;

"Immovable property". (27) "Immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

"Imprisonment.". (28) "Imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code;

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(6) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

(6-a) Substituted by *ibid.*

(29) [7][* *].

"Local authority".

(30) "Local authority" shall mean a Municipal Committee, District Board, or any other authority entrusted by [8][any] Government with, or legally entitled to the control or management of a municipal fund;

(31) [7][* *].

"Magistrate".

(32) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force;

"Master" (of a ship).

(33) "Master" used with reference to a ship, shall mean any person (except a pilot or harbour-master) having for the time being control or charge of the ship;

"Month".

(34) "Month" shall mean a month reckoned according to the British calendar;

"Movable property".

(35) "Movable property" shall mean property of every description except immovable property;

"Notification".

(36) "Notification" shall mean a notification in the [8][Official Gazette];

"Oath".

(37) "Oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;

"Offence".

(38) "Offence" shall mean any act or omission made punishable by any law for the time being in force;

"Part".

(39) "Part" shall mean a part of the Act or Regulation in which the word occurs;

"Person".

(40) "Person" shall include any company or association or body of individuals, whether incorporated or not;

"Political Agent".

(41) "Political Agent" shall include—

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(7) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

(8) Substituted by *ibid.*

(*a*) the principal officer representing the [9][Crown] in any territory or place beyond the limits of British India, and

(*b*) any officer [10][* *] appointed to exercise all or any of the powers of a Political Agent for any place not forming part of British India under the law for the time being in force relating to foreign jurisdiction;

(42) [10][* *].

"Public nuisance". (43) "Public nuisance" shall mean a public nuisance as defined in the Indian Penal Code;

"Registered". (44) "Registered" used with reference to a document, shall mean registered in British India under the law for the registration of documents;

"Regulation". (45) "Regulation" shall mean a regulation made under the Government of India Act, 1870, or the Government of India Act, 1915;

"Rule". (46) "Rule" shall mean a rule made in exercise of a power conferred by an enactment, and shall include a regulation made as a rule under any enactment;

"Schedule". (47) "Schedule" shall mean a schedule to the Act or Regulation in which the word occurs;

"Scheduled District". (48) "Scheduled District" shall mean a "Scheduled District" as defined in the Scheduled Districts Act, 1874;

"Section". (49) "section" shall mean a section of the Act or Regulation in which the word occurs.

"Ship". (50) "Ship" shall include every description of vessel used in navigation not exclusively, propelled by oars;

"Sign". (51) "Sign" with its grammatical variation and cognate expressions, shall with reference to a person who is unable to write his name,

(9) Substituted the word 'Crown' for 'Government' by Government of India (Adaptation of Indian Laws) Order, 1937.

(10) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

include "mark" with its grammatical variations and cognate expressions;

"Son". (52) "Son" in the case of any one whose personal law permits adoption, shall include an adopted son;

"Sub-section". (53) "Sub-section" shall mean a sub-section of the section in which the word occurs;

"Swear". (54) "Swear" with its grammatical variations and cognate expressions shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing;

"Vessel". (55) "Vessel" shall include any ship or boat or any other description of vessel used in navigation.

"Will". (56) "Will" shall include a codicil and every writing making a voluntary posthumous disposition of property;

"Writing". (57) Expression referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form; and

"Year". (58) "Year" shall mean a year reckoned according to the British calendar.

Continuance of certain definitions for purposes of certain Act. 5. In any Bengal Act made between the first day of June, 1867 and the eighteenth day of January, 1899, which is still in force in Bihar and Orissa, unless there is anything repugnant in the subject or context,—

(1) "land" includes houses and buildings and corporeal hereditaments and tenements of any tenure unless where there are words to exclude houses and buildings or to restrict the meaning to tenements of some particular tenure; and

(2) "person" includes any incorporated company or incorporated association of persons.

GENERAL RULES OF CONSTRUCTION.

Coming into operation of Acts.

6. Where any Bihar and Orissa Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which the assent thereto of the [11][Central Government] is first published in the [11][Official Gazette] in pursuance of S. 81 of the Government of India Act, 1915.

[12][(1-*a*) Where any Bihar Act is not expressed to come into operation on a particular day, then it shall come into operation if it is an Act of the Legislature on the day when the assent thereto of the Governor, the Governor-General or His Majesty, as the case may require, is first published in the Official Gazette and if it is an Act of the Governor on the day on which it is first published as an Act in the Official Gazette.]

(2) Unless the contrary is expressed, a Bihar and Orissa Act [12][or Bihar Act] shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

Printing of date on which Act is published.

7. In every Bihar and Orissa Act [12][or Bihar Act] the date of such publication as is mentioned in S. 6, sub-S. (1), shall be printed either above or below the title of the Act and shall form part of the Act.

Effect of repeal.

8. Where any Bihar and Orissa Act [12][or Bihar Act] repeals any enactment hitherto made, or hereafter to be made, then unless a different intention appears, the repeal shall not—

(*a*) revive anything not in force or existing at the time at which the repeal takes effect; or

(*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(*c*) affect any right, privilege, obligation, or liability accrued, incurred under any enactment so repealed; or

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(11) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(12) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

(*d*) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(*e*) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued or enforced any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed.

Revival of repealed enactment.

9. In any Bihar and Orissa Act [13][or Bihar Act] it shall be necessary for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

Construction of references to repealed enactments.

10. Where any Bihar and Orissa Act [13][or Bihar Act] repeals and re-enacts, with or without modification, any provision of a former enactment, references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Commencement and termination of time.

11. In any Bihar and Orissa Act [13][or Bihar Act] it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the words "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to."

Computation of time.

12. Where by any Bihar and Orissa Act, [13][or Bihar Act] any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, than, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, on which the Court or office is open:

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(13) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

Provided that nothing in this section shall apply to any Act or proceeding to which the Indian Limitation Act, 1908, applies.

Measurement of distances.

13. In the measurement of any distance, for the purposes of any Bihar and Orissa Act [14][or Bihar Act] that distance shall unless a different intention appears, be measured in a straight line on a horizontal plane.

Duty to be taken *pro rata* in enactments.

14. Where by any enactment now in force or hereafter to be in force any duty of customs or excise, or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandize, then a like duty is leviable according to the same rate on any greater or less quantity.

Gender and Number.

15. In all Bihar and Orissa Acts [14][and Bihar Acts] unless there is anything repugnant in the subject or context,—

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural and *vice versa*.

Powers and Functionaries.

When powers and duties to be exercised and performed.

16. Where a Bihar and Orissa Act [14][or Bihar Act] confers a power or imposes a duty, then the power may be exercised and the duty shall be performed from time to time as occasion requires.

Exercise of power and performance of duty by temporary holder of office.

17. Where a Bihar and Orissa Act [14][or Bihar Act] confers a power or imposes a duty on the holder of an office, as such, then the power may be exercised and the duty shall be performed by the holder for the time being of the office.

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(14) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

Power to appoint to include power to appoint *ex officio*.

18. Where, by a Bihar and Orissa Act [15][or Bihar Act] a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment may be made either by name or by virtue of office.

Power to appoint to include power to suspend or dismiss.

19. Where, by any Bihar and Orissa Act, [15][or Bihar Act] a power to make any appointment is conferred, then, unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power.

Substitution of functionaries.

20. In any Bihar and Orissa Act [15][or Bihar Act] it shall be sufficient for the purpose of indicating the application of a law to every person or a number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions, are commonly executed.

Successors.

21. In any Bihar and Orissa Act [15][or Bihar Act] it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

Official chiefs and subordinates.

22. In any Bihar and Orissa Act [15][or Bihar Act] it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

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(15) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

PROVISIONS AS TO ORDERS, RULES, ETC., MADE UNDER ENACTMENTS.

Construction of orders, etc., issued under enactments.

23. Where, by any Bihar and Orissa Act [16][or Bihar Act] a power to make or issue any notification, order, scheme, rule, by-law or form, is conferred, the expressions used in the notification, order, scheme, rule, by-law or form shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act conferring the power.

Power to make to include power to add to, amend, vary or rescind orders, rules or by-laws.

24. Where, by any Bihar and Orissa Act, [16][or Bihar Act] a power to make or issue notifications, orders, schemes, rules, by-laws or forms, is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, schemes, rules, by-laws or forms so made or issued.

Making of rules or by-laws and issuing of orders between passing and commencement of enactment.

25. Where, by any Bihar and Orissa Act, [16][or Bihar Act] which is not due to come into operation on [17][the passing thereof] a power is conferred to make rules or by-laws, or to issue orders with respect to the application of the Act or with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act, then that power may be exercised at any time after the [17][passing thereof], but rules, by-laws, or orders so made or issued shall not take effect till the commencement of the Act.

Provisions applicable to making of rules or by-laws after previous publication.

26. Where, by any Bihar and Orissa Act, [16][or Bihar Act] a power to make rules or by-laws is expressed to be given, subject to the condition of the rules or by-laws being made after previous publication, then the following provisions shall applly, namely,

(16) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

(17) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(1) the authority having power to make the rules or by-laws, shall before making them, publish a draft of the proposed rules or by-laws for the information of persons likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires in such manner as the [18][Provincial Government] prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or by-laws, and where the rules or by-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or by-laws from any person with respect to the draft before the date so specified;

(5) the publication in the [18][Official Gazette] of a rule or by-law purporting to have been made in exercise of a power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law has been duly made.

Continuation of orders, etc., issued under enactments repealed and re-enacted.

27. Where any enactment is repealed and re-enacted by a Bihar and Orissa Act [19][or Bihar Act] with or without modification, then, it is otherwise expressly provided, any appointment, notification, order, scheme, rule, by-law or form made or issued under the repealed enactment, shall so far as it is not inconsistent with the provisions re-enacted, continue in force and be deemed to have been made or issued under the provisions so re-enacted unless and until it is superseded by any appointment, notification, order, scheme, rule, by-law or form, made or issued under the provisions so re-enacted.

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(18) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(19) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

Publication of orders and notifications in the Official Gazette.

28. Where, in any Bihar and Orissa Act, [20][or Bihar Act] or in any rule made under any such Act, it is directed that any order, notification or other matter shall be notified or published, such notification or publication shall, unless the Act otherwise provides, be deemed to be duly made if it is published in the [21][Official Gazette].

MISCELLANEOUS.

Recovery of fines.

29. Sections 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time-being in force in relation to the issue and the execution of warrants for levy of fines shall apply to all fines imposed under any Bihar and Orissa Act [20][or Bihar Act] or any rule or by-law made under any Bihar and Orissa Act, unless the Act, rule or by-law contains an express provision to the contrary.

Provision as to offence punishable under two or more enactments.

30. Where an act or omission constitutes an offence under two or more enactments, the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

Meaning of service by post.

31. Where, any Bihar and Orissa Act, [20][or Bihar Act] authorises or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Citation of enactments.

32. (1) In any Bihar and Orissa Act, [20][or Bihar Act] and in any rule, by-law, instrument, or document, made under, or with reference to, any Bihar and Orissa Act, any enact-

(20) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

(21) Substituted by *ibid.*

ment may be cited by reference to title or short title (if any) conferred thereon, or by reference to the number and year thereof, and any provision in any enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

(2) In any Bihar and Orissa Act [22][or Bihar Act] a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

Saving of previous enactments, rules and by-laws.

33. Where any Act, rule or by-law made after the commencement of this Act continues or amends any Acts, rules or by-laws made before the commencement of this Act, the foregoing sections of this Act shall not by reason merely of such continuance or amendment affect the construction of such Acts, rules or by-laws.

Application to Ordinances and Regulations under the Government of India Act, 1935.

[23][**34.** The provisions of this Act shall apply,—

(*a*) in relation to any regulation made by the Governor of Bihar under S. 92 of the Government of India Act, 1935, as they apply in relation to Acts made by the Provincial Legislature of Bihar; and

(*b*) in relation to any ordinance promulgated by the Governor under S. 88 or S. 89 of the said Act, as they apply in relation to Acts made under that Act by the Governor.].

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(22) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

(23) Section 34 added by the Government of India (Adaptation of Indian Laws) Order, 1937.

APPENDIX I.

THE CENTRAL PROVINCES GENERAL CLAUSES ACT (I OF 1914).

An Act for facilitating the interpretation of Central Provinces Acts, and for shortening the language used therein.

WHEREAS it is expedient to facilitate the interpretation of Central Provinces Acts, and shorten the language used therein;

It is hereby enacted as follows:—

Preliminary.

Short title and commencement.

1. (1) This Act may be called THE CENTRAL PROVINCES GENERAL CLAUSES ACT, 1914.

(2) It shall come into force at once.

Definitions.

2. In this Act and in all [1][Provincial Acts], made after the commencement of this Act, unless there is anything repugnant in the subject or context,—

Definitions.

"Abet." (1) "Abet" with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code;

"Act." (2) "Act" used with reference to an offence or a civil wrong, shall include a series of acts; and words which refer to acts done extend also to illegal omissions.

"Affidavit." (3) "Affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;

"Barrister." (4) "Barrister" shall mean a barrister of England or Ireland or a member of the Faculty of Advocate in Scotland;

"Berar." [2][(4-*a*) "Berar" shall have the same meaning as in the Government of India 1935];

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(1) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(2) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

[3](5) [* * * *]

(6) "British possession" shall mean any part of His Majesty's dominions exclusive of the United Kingdom, and, where parts of these dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession;

"British possession."

(7) [4]["Central Provinces" shall mean the territories, excluding Berar, for the time being under the administration of the Chief Commissioner or the Governor of the Central Provinces, or the Governor of the Central Provinces and Berar];

"Central Provinces."

(8) "Central Provinces Act" shall mean an Act made by the Chief Commissioner of the Central Provinces in Council under the Indian Councils Acts, 1861 to 1909, [5][or the Government of India Act, 1915 or by the Local Legislature, or the Governor of the Central Provinces under the Government of India Act];

"Central Provinces Act."

[5][(8-a) "Central Provinces and Berar Act" shall mean an Act made by the Provincial Legislature or the Governor of the Central Provinces and Berar under the Government of India Act, 1935];

"Central Provinces and Berar Act."

(9) "Chapter" shall mean a Chapter of the [4][Provincial Act] or Regulation in which the word occurs;

"Chapter."

(10) "Collector" shall mean the chief officer in charge of the revenue administration of a district;

"Collector."

(11) "Colony" shall mean any part of His Majesty's dominions exclusive of the British Islands and of British India, and, where parts of those dominions are under both a central and a local legislature, all parts under the Central Legislature shall, for the purpose of this definition, be deemed to be one colony;

"Colony."

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(3) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

(4) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(5) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

[5-a][Provided that in any Provincial Act passed after the commencement of Part III of the Government of India Act, 1935, 'Colony' shall not include any dominion as defined in the Statute of Westminster, 1931, any Province or State forming part of such a Dominion or British Burma];

"Commencement." (12) "Commencement", used with reference to an Act, shall mean the day on which the Act comes into force;

"Commissioner." (13) "Commissioner" shall mean the chief officer in charge of the revenue administration of a division;

"Consular Officer." (14) "Consular Officer" shall include consul-general, consul, vice-consul, consular agent, pro-consul, and any person for the time being authorised to perform the duties of consul-general, consul, vice-consul, or consular agent;

"District Judge." (15) "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction in a district;

"Document." (16) "Document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, which is intended to be used, or which may be used; for the purpose of recording that matter;

"Enactment." (17) "Enactment" shall include provision contained in any [6][Provincial Act] or Regulation;

"Father." (18) "Father" in the case of any one whose personal law permits adoption, shall include an adoptive father;

(19) [7][* * * *]

"Financial Year." (20) "Financial year" shall mean the year commencing on the 1st day of April;

"Gazette." [6][(21) "Gazette" shall mean the Official Gazette of the Province];

"Good faith." (22) a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not;

(5-a) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

(6) Substituted by *ibid.*

(7) Omitted by *ibid.*

(23) [8][* * * *]

(24) [8][* * * *]

[9][(24-a) "Governor" shall mean before the commencement of Part III of the Government of India Act, 1935, the Governor of the Central Provinces, and after the commencement of the said Part III the Governor of the Central Provinces and Berar];

"Governor."

"His Majesty," or "the King Emperor."

(25) "His Majesty" or "the King Emperor" shall include his successors;

"Immovable property."

(26) "Immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

"Imprisonment."

(27) "Imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code;

(28) [8][* * * *]

"Local authority."

(29) "Local authority" shall mean a Municipal Committee, District Council, or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;

(30) [8][* * * *]

"Magistrate."

(31) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force;

"Month."

(32) "Month" shall mean a month reckoned according to the British Calendar;

"Movable property."

(33) "Movable property" shall mean property of every description, except immovable property;

"Notification."

(34) "Notification" shall mean a notification published in the [9-a][Official Gazette];

"Oath."

(35) "Oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;

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(8) Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

(9) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

(9-a) Substituted by *ibid.*

"Offence." (36) "Offence" shall mean any act or omission made punishable by any law for the time being in force;

"Part." (37) "Part" shall mean a part of the [10][Provincial Act] or Regulation in which the word occurs;

"Person." (38) "Person" shall include any company or association or body of individuals, whether incorporated or not;

"Province." (39) "Province" shall mean the territories for the time being administered by any [11][Provincial Government];

"Provincial Act." (39-a) [11]["Provincial Act" shall mean a Central Provinces Act or a Central Provinces and Berar Act];

"Provincial Government." (39-b) [11]["Provincial Government" shall mean the Provincial Government (as defined in the General Clauses Act, 1897) of the Central Provinces or the Central Provinces and Berar];

"Public nuisance." (40) "Public nuisance" shall mean a public nuisance as defined in the Indian Penal Code;

"Registered." (41) "Registered" used with reference to a document, shall mean registered in British India under the law for the time being in force, for the registration of documents;

"Regulation." (42) "Regulation" shall mean a Regulation made [10][by the Governor of the Central Provinces and Berar under S. 92 of the Government of India Act, 1935];

"Rule." (43) "Rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment;

"Schedule." (44) "Schedule" shall mean a Schedule to the [10][Provincial Act], or Regulation in which the word occurs;

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(10) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(11) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

"Scheduled District."

(45) "Scheduled District" shall mean a "Scheduled District" defined in the Scheduled Districts Act, 1874;

"Section."

(46) "Section" shall mean a section of the [12][Provincial Act] or Regulation in which the word occurs;

"Sign."

(47) "Sign" with its grammatical variations and cognate expressions, shall with reference to a person, who is unable to write his name, include "mark", with its grammatical variations and cognate expressions;

"Son."

(48) "Son" in the case of any one whose personal law permits adoption, shall include an adopted son;

"Sub-section."

(49) "Sub-section" shall mean a sub-section of the section in which the word occurs;

"Swear."

(50) "Swear" with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing;

"Vessel."

(51) "Vessel" shall include any ship or boat or any other description of vessel used in navigation;

"Will."

(52) "Will" shall include a codicil and every writing making a voluntary posthumous disposition of property;

'Writing."

(53) Expressions referring to "writing" shall be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form; and

"Year."

(54) "Year" shall mean a year reckoned according to the British calendar.

General rules of construction.

Coming into operation of Central Provinces Act.

3. [12][(1) Where any Provincial Act is not expressed to come into operation on a particular day, then it shall come into operation, if it is an Act of the legislature, on the day on which the assent thereto of the Governor, the

(12) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

Governor-General or His Majesty, as the case may require, is first published in the Official Gazette, and if it is an Act of the Governor, on the day on which it is first published as an Act in the Official Gazette].

(2) Unless the contrary is expressed, a [13][Provincial Act] shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

Printing of date on which Act is published after having received the assent of the Central Government.

4. In this Act and in every [13][Provincial Act,] the date of such publication as is mentioned in S. 3, sub-S. (1) shall be printed above the title of the Act, and shall form part of the Act.

Effect of repeal.

5. Where any [13][Provincial Act] repeals any enactment hitherto made or hereafter to be made, then unless a different intention appears, the repeal shall not—

(*a*) revive anything not in force or existing at the time at which the repeal takes effect; or

(*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(*c*) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(*d*) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(*e*) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

Revival of repealed enactments.

6. In any [13][Provincial Act] it shall be necessary for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

(13) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

Construction of references to repealed enactments.

7. Where any [14][Provincial Act] repeals and re-enacts, with or without notification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Commencement and termination of time.

8. In any [14][Provincial Act], it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time to use the word "to".

Computation of time.

9. Where, by any [14][Provincial Act] any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time, if it is done or taken on the next day afterwards on which the Court or office is opened:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1908, applies.

Measurement of distances.

10. In the measurement of any distance for the purpose of any [14][Provincial Act], made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

Duty to be taken *pro rata* in enactments.

11. Where by an enactment now in force or hereafter to be in force, any duty or Customs or Excise, or in the nature thereof, is leviable on any given quantity, by weight, measure of value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

Gender and number.

12. In all [14][Provincial Act] unless there is anything repugnant in the subject or context,—

(14) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and *vice versa*.

Powers and Functionaries.

Powers conferred on the Provincial Government to be exercisable from time to time.

13. Where by any [15][Provincial Act] any power is conferred on the [15][Provincial Government] then that power may be exercised, from time to time as occasion requires.

Power to appoint to include power to appoint *ex officio*.

14. Where, by any [15][Provincial Act] a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment may be made either by name or by virtue of office.

Power to appoint to include power to suspend or dismiss.

15. Where, by any [15][Provincial Act] a power to make any appointment is conferred, then, unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of the power.

Substitution of functionaries.

16. In any [15][Provincial Act], it shall be sufficient for the purpose of indicating the application of law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

Successors.

17. In any [15][Provincial Act] it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

Official Chiefs and subordinates.

18. In any [15][Provincial Act] it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully

(15) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

Provisions as to Orders, Rules, etc., made under enactments.

Construction of orders, etc., issued under Central Provinces Acts.

19. Where, by any [16][Provincial Act] a power to issue any order, scheme, rule, by-law, notification or form is conferred, then expressions used in the order, scheme, rule, by-law, notification or form, if it is made after the commencement of this Act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act conferring the power.

Power to make to include power to add to, amend, vary or rescind orders, etc.

20. Where by any [16][Provincial Act] a power to issue orders, rules, by-laws or notifications is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any orders, rules, by-laws or notifications so issued.

Making of rules or by-laws and issuing of orders between publication and commencement of Central Provinces Acts.

21. Where, by any [16][Provincial Act] which is not to come into operation [16][immediately on the passing thereof] a power is conferred to make rules or by-laws, or to issue orders with respect to the application of the Act, or with respect to the establishment of any Court or office, or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which anything is to be done under the Act, then that power may be exercised at any time [16][after the passing of the Act] but rules, by-laws or orders so made or issued shall not take effect till the commencement of the Act.

Provisions applicable to making of rules or by-laws after previous publication.

22. Where by any [16][Provincial Act] a power to make rules or by-laws is expressed to be given subject to the condition of the rules or by-laws being made after previous publication then the following provisions shall apply, namely,—

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(16) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(1) the authority having power to make the rules or by-laws shall before making them, publish a draft of the proposed rules or by-laws for the information of persons likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the [17][Provincial Government] prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or by-laws, and, where the rules or by-laws are to be made with the sanction, approval or concurrence of another authority, that authority also shall consider any objection or suggestion which may be received by the authority having power to make the rules or by-laws from any person with respect to the draft before the date so specified;

(5) the publication in the [17][Official Gazette] of a rule or by-laws purporting to have been made, in exercise of a power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law has been duly made.

Continuation of orders, etc., issued under enactments repealed and re-enacted.

23. Where any enactment is, after the commencement of this Act, repealed and re-enacted by a [17][Provincial Act] with or without modification, then unless it is otherwise expressly provided, any appointment, order, scheme, rule, by-law, notification or form made or issued under the repealed enactment shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, order, scheme, rule, by-law, notification or form made or issued under the provisions so re-enacted.

Miscellaneous.

Recovery of fines.

24. Sections 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in

(17) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

relation to the issue and the execution of warrants for the levy of fines, shall apply to all fines imposed under any [18][Provincial Act] or any rule or by-law made under any [18][Provincial Act] unless the Act, rule or by-law contains an express provision to the contrary.

Provision as to offences punishable under two or more enactments.

25. Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

Meaning of service by post.

26. Where any [18][Provincial Act] authorises or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Citation of enactments.

27. (1) In any [18][Provincial Act] and in any rule, by-law, instrument or document made under, or with reference to, any [18][Provincial Act] any enactment may be cited by reference to the title of short title (if any) conferred thereon or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

(2) In this Act, and in any [18][Provincial Act] made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

Application to Ordinances and Regulations under the Government of India Act, 1935.

[19][**28.** The provisions of the Act shall apply—

(18) Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

(19) Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

(1) in relation to any Regulation made by the Governor of the Central Provinces and Berar under S. 92 of the Government of India Act, 1935, as they apply in relation to Acts made by the Provincial Legislature of the Central Provinces and Berar; and

(2) in relation to any Ordinance promulgated by the Governor under S. 88 or S. 89 of the said Act as they apply in relation to Acts made under that Act by the Government.]

APPENDIX J.

GOVERNMENT OF INDIA ACT, 1935.

SEVENTH SCHEDULE.

LEGISLATIVE LISTS.

LIST I.

Federal Legislative List.

INTRODUCTORY.

Delimitation of Legislative Powers under the Government of India Act.

"We have already explained that the general plan of the White Paper, which we endorse, is to enumerate in two lists the subjects in relation to which the Federation and the Provinces respectively will have an exclusive legislative jurisdiction; and to enumerate in a third list the subjects in relation to which the Federal and each Provincial Legislature will possess concurrent legislative powers—the powers of a Provincial Legislature in relation to the subjects in this list extending, of course, only to the territory of the Province. The result of the statutory allocation of exclusive powers will be to change fundamentally the existing legislative relations between the Centre and the Provinces. At present the Central Legislature has the legal power to legislate on any subject, even though it be classified by rules under the Government of India Act as a provincial subject, and a Provincial Legislature can similarly legislate for its own territory on any subject, even though it be classified as a Central subject; for the Act of each Indian Legislature, Central or Provincial, requires the assent of the Governor-General, and, that assent having been given, S. 84 (3) of the Government of India Act provides that 'the validity of any Act of the Indian Legislature or any Local Legislature shall not be open to question in any legal proceedings on the ground that the Act affects a Provincial subject or a Central subject as the case may be.'' If our recommendations are adopted, an enactment regulating a matter included in the exclusively Provincial List will hereafter be valid only if it is passed by a Provincial Legislature,

and an enactment regulating a matter included in the exclusively Federal List will be valid only if it is passed by the Federal Legislature; and to the extent to which either Legislature invades the province of the other, its enactment will be *ultra vires* and void. It follows that it will be for the Courts to determine whether or not in a given enactment the Legislature has transgressed the boundaries set for it by the exclusive list, federal or provincial, as the case may be. *Vide* Para. 229 of the Report of the Joint Committee on Indian Constitutional Reform.

1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments; any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment; central intelligence bureau; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

NOTES.

Cf. S. 91 (7) of British North America Act (Militia, Military and Naval Service and Defence) and S. 51 (*vi*) of the Commonwealth of Australia Constitution Act. (The naval and Military defence of the Commonwealth and of the several States and the control of the Forces to execute and maintain the Laws of the Commonwealth).

Under this head the Federal Legislature is empowered to legislate on all military and air forces borne on the Indian establishment or other forces raised in India by the Crown as also forces attached to or operating with such forces though not forming part of His Majesty's forces. Exception however is made in two cases: (1) forces raised for employment in Indian States, and (2) military and armed police maintained by the Provincial Government. (*Cf.* Item 3 of the Provincial Legislative list). The Federal Legislature has no power to make any law affecting the Army Act, the Air Force Act or the Naval Discipline Act or the Law of Prize or Prize Courts [S. 110 (1) of Constitution Act]. A federal law passed for the regulation or discipline of Naval, Military or Air force raised in India and intended to affect those connected with those forces is valid even if it has extra territorial operation, this being an exception to the rule that subordinate legislatures cannot be deemed to have extra-territorial jurisdiction unless the same is conferred on them expressly or by necessary implication. [*Vide* S. 99 (2) of the Government of India Act, 1935 and *Merchant Services* v. *Steamship Owners*, 16 C.L.R. 702]. The Federal Legislature can by legislation apply the Naval Discipline Act to the

Indian Naval Forces and provisions relating to His Majesty's Navy and ships shall have in such a case equal application to the Indian Navy and ships, subject to such adaptations as may be made by the same legislature to suit the circumstances in India (S. 105).

For the Central Intelligence Bureau, *see* para. 97 of the J. C. Report.

2. Naval, military and air force works; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas.

NOTES.

Works, land and buildings vested in His Majesty for purposes of Federation (Item 10 of the Federal List and S. 172 of the Constitution Act) and Naval, Military and Air Force works under this item all fall under the Federal sphere. S. 127 of the Constitution Act provides for acquisition of land by a federation in a province when it deems it necessary to do so for purposes in regard to which the Federal Legislature can legislate. In regard to such property (referred to in Item 10) situated in a province, however, it is subject to provincial legislation except to the extent it is overridden by Federal Legislation. Also lease property in a Federated State held under any agreement with the State can be legislated upon subject to the terms of such agreement.

Again, under this head only Local Self-Government in Cantonment areas and the constitution and powers of cantonment authorities within such areas are included and not the whole subject of Cantonments. Offences against laws with respect to these alone are exclusively assigned to the Federation. Entry 1 in the Concurrent List includes the whole field of criminal law excepting only offences against laws in regard to matters specified in the exclusively Federal and exclusively Provincial Lists. Subject to the rules of repugnancy under S. 107 (1) therefore both the Federal and Provincial Legislatures can legislate in regard to offences under criminal law in general including all matters comprised in the Indian Penal Code in regard to the Cantonment Areas excepting only in regard to those on which as stated above only the Federal Legislature can legislate.

3. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

NOTES.

Cf. S. 132 of the British North America Act. S. 106 of the Constitution Act qualifies and restricts the powers of the Federal Legislature under this entry in regard to implementing of treaties and agreements with other countries. In case the Federal Legislature trenches on provincial subjects, the previous consent of the Governor or the Ruler of a State will have to be obtained before passing such legislation. The right exists not merely to legislate upon the matter comprised in the entry but also to its repeal by the Federal Legislature so

far as it affects the federation, and by the Province or State so far as it affects them after the termination of the treaty or agreement in regard to which power is conferred under the section. As an example may be cited: The Italian Loans and Credit Prohibition Act (I of 1936) passed by Indian Legislature on 21—4—1936 and repealed immediately after the Abyssinia War. Under S. 132 of the British North America Act, however, which conferred on Parliament and Government of Canada the powers for performing all obligations of 'Canada or any other Province thereof' towards foreign countries, it was held In re *Regulation and Control of Aeronautics in Canada*, (1932) A. C. 54 by the Privy Council that the Dominion had full power to implement the convention for regulating aerial navigation drawn up in 1919 by a commission appointed by the Paris Peace Conference after the Great War. A distinction was drawn between treaties between British Empire and foreign countries which Canada had undertaken to implement on the one hand, and conventions agreed to be implemented by Canada as an independent unit to which provisions of S. 132 were not applicable. *Cf.* In re *Regulation and Control of Radio Communication in Canada*, (1932) A. C. 304. The legislation in the above case which was passed by the Federal Legislature related to the International Radio Telegraph Convention, 1927, but was supported, however, on other grounds. In the still later case reported in *A.-G. for Canada* v. *A.-G. for Ontario and others*, (1937) A. C. 326, the position was still further clarified. Lord Atkin pointed out that in that case the obligation was undertaken by Canada as an independent unit and the implementing of the same by legislation could not be undertaken by the Dominion alone without reference to the Provinces. As his Lordship put it 'while the ship of State sails on large ventures and into foreign waters she retains the water-tight compartments which are an essential part of the original structure'.

The making of a treaty is an executive act within the British Empire and requires legislative sanction to be effective as binding law of the country. The executive act binds the State so far as the other contracting parties are concerned but to be operative within the realm there should be legislation passed by a competent Parliament. 'In a Federal State where legislative authority is limited by a constitutional document or is divided up between different legislatures in accordance with the classes of subject-matter submitted for legislation .....the obligation imposed by treaty may have to be performed, if at all, by several legislatures; and the executive have the task of obtaining the legislative assent not of the Parliament to whom they may be responsible but possibly of several Parliaments to whom they stand in no direct relation. The question is not how is the obligation formed, that is the function of the executive; but how is the obligation to be performed and that depends upon the authority of the competent legislature or legislatures'. *Attorney-General for Canada* v. *A.-G. for Ontario and others*, (1937) A. C. 326. In Australia, however, the Commonwealth Parliament has full power to implement by legislation treaties entered into by its Federal Executive under the head 'External affairs'. *Vide* Ramaswami Aiyar's Law of the Indian Constitution, footnote at p. 242. In the United States of America it was held that the Migratory Bird

Treaty Act passed by the United States of America to implement a treaty entered into between that country and Great Britain was valid notwithstanding the fact that states have a constitutional right and title to Migratory Birds within them. *Missouri* v. *Holland*, 252 U.S. 416.

4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage and legal tender.

NOTES.

Cf. S. 91 (14) of British North America Act which deals with 'currency and coinage' and S. 91 (20) with legal tender both under the exclusive legislative competence of the Dominion and S. 51 (*xii*) of the Commonwealth of Australia Act which deals with the same subjects as being within the exclusive jurisdiction of the commonwealth Parliament. These subjects are always considered as the prerogative of the Sovereign and are therefore vested in the Federal Authority.

Section 153 of the Constitution Act requires the previous sanction of the Governor-General in his discretion for the introduction in either Chamber of the Federal Legislature any Bill or amendment affecting the Coinage or Currency of the Federation or the constitution or functions of the Reserve Bank of India. The Reserve Bank of India was mainly created to entrust the functions of control on Currency and Exchange to an independent body free from the control of the economic theories of Political India and to invest its functions in the Governor-General personally. (*Cf.* S. 152 of the same Act) instead of the Federal Executive responsible to the legislature.

6. Public debt of the Federation.

NOTES.

Cf. S. 91 (4), British North America Act, S. 51 (*iv*) Commonwealth of Australia Act, and S. 162 of the Constitution Act, which refers to the powers of borrowing upon the security of the revenues of the Federation within limits fixed by the Federal Legislature and subject to such guarantees as may also be fixed by it.

7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication; Post Office Savings Bank.

NOTES.

Cf. S. 91 (5), Postal Service; S. 91 (6) Savings Banks and *cf.* S. 92 (10) of the British North America Act. Also S. 51 (*v*) and S. 51 (*xiii*) of the Commonwealth of Australia Act:—

Even though wireless and Broadcasting were unknown at the time British North America Act, 1867, was passed the Privy Council held they could be brought under the power of the Dominion Legislature under the head of 'Undertakings connecting Province with Province' and 'telegraph', in In re *Regulation and Control of Radio Communications in Canada*, (1932) A. C. 304, on the ground that constitution statutes should be given a broad and liberal interpretation.

The Federal Power is however subject to the terms of S. 129 of the Act. The Federal Government should not refuse to entrust to any

Provincial Government or the Ruler of a Federated State functions necessary to construct and use transmitters therein, or to regulate and impose fees in respect of such construction and use. Where the Federal Government itself constructs or maintains transmitters it is not obligatory upon it to entrust the same to the Provincial Government or the State Ruler. Where Federal Government entrusts any such functions to the Provinces or the Rulers of States, it may subject the exercise of such rights or obligation to conditions relating to finance but it cannot lay restrictions on the matters broadcast by the Provincial Government or the Ruler of a State. Where a dispute arises between the Federal Government and the Provincial Government or the Ruler of a State as regards the aforesaid matters the Governor-General in his discretion is to settle the dispute. The powers of the Governor-General for the prevention of any grave menace to the peace and tranquility of any part of India are not affected nor his right to regulate the matter broadcast so as to enable him to discharge his functions under the Act to be exercised in his discretion or in his individual judgment.

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues.

10. Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province, subject always to provincial legislation, save in so far as Federal law otherwise provides, and, as regards property in a Federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement.

NOTES.

See notes to Item 2.

11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or financed by the Federation.

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. The Benares Hindu University and the Aligarh Muslim University.

14. The Survey of India, the Geological, Botanical and Zoological Surveys of India; Federal meteorological organisations.

15. Ancient and historial monuments; archæological sites and remains.

16. Census.

17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom; pilgrimages to places beyond India.

18. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.

19. Import and export across customs frontiers as defined by the Federal Government.

20. Federal railway; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

21. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

NOTES.

Cf. S. 91 (10), Shipping and Navigation of British North America Act and S. 51 (1) and S. 98 of Commonwealth of Australia Constitution Act.

Under the Australia Act power of the Commonwealth Parliament is restricted to navigation and shipping of overseas or inter-state character and the States have power in regard to inter-state shipping and navigation. *Huddart & Co., Ltd.* v. *Moorhead*, (1908) 8 C.L.R. 330 at 352.

In India maritime shipping and navigation on the seas including those on tidal waters are made an exclusively Federal subject unlike in Australia, as it was felt desirable to have the same under the control of a single unit. Shipping and navigation on inland waterways navigable rivers, lakes and artificial waterways are not subject however to exclusive Federal control. *Cf.* Item 32 of List III a concurrent subject, and entry 18 in the Provincial List relating to inland waterways and traffic thereon subject to the provisions of List III.

22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

23. Fishing and fisheries beyond territorial waters.

NOTES.

Fishing and Fisheries beyond Territorial waters.

Cf. S. 51 (*x*), Commonwealth of Australia Act, dealing with "Fisheries in Australian Waters beyond territorial limits".

Under the Indian Act Fishing is an exclusively Federal subject while Fisheries is both a Provincial and Federal subject. The Federal Legislature, however, has exclusive jurisdiction in regard to fisheries beyond territorial waters while the provinces have jurisdiction in regard to inland fisheries and those within territorial limits, *i.e.*, within three miles adjoining the coast. (Item 24 of List II). The Federal Legislature would have right to enact laws and regulations in relation to the manner, time and place of fishing and to preserve and protect them.

Extra-territorial Legislation.

Under the ordinary principles of International law the territories of a State extend not merely to that which is contained within the limits of the State proper but to a portion of the sea lying along and washing its coast up to a distance of three miles from the shore. It is this three mile area which is generally denominated as the territorial waters of a country and is considered part of the State to which it is adjoining according to International law. Ordinarily speaking a Colonial Legislature is empowered to enact laws that operate within the limits of its jurisdiction alone except where Imperial Parliament creating it otherwise enacts. *Cf. McLeod* v. *A.-G. for New South Wales,* (1891) A.C. 455, where a Colonial Legislature was held incompetent to legislate beyond its territorial limits and the Trial of *Earl Russel,* (1901) A. C. 446, where the Imperial Legislature was held to be free from any such restrictions. The same would apply to India and the Federal Legislature is competent to enact laws for British India and Federated States both for the inland territory as well as the three mile belt of the sea lying beyond the coast. *Cf.* S. 2 of the Territorial Waters Jurisdiction Act (41 and 42 Vic., c. 73) which defines territorial waters with reference to sea as meaning "such part of Her Majesty's Dominion as is deemed by International Law to be within the territorial sovereignty of Her Majesty ..... any part of the open sea within one marine league of the coast measured from low water mark shall be deemed to be open sea within territorial waters of Her Majesty's Dominions". For certain purposes, however, *e.g.*, Police, Revenue, Public Health and Fisheries a State can enact laws affecting the seas surrounding its coast to a distance much beyond the three mile limit. Cf. *Croft* v. *Dumphy,* (1933) A.C. 156.

S. 99 (2) of the Government of India Act defines the limits of the competency of the Federal Legislature to enact laws intended to have extra-territorial operation and is enacted however to operate without prejudice to the generality of powers contained in sub-S. (1) of S. 99 defining in general the extent of the Federal and Provincial laws.

In a case arising S. 91 (12) of the British North America Act which vests the subject of 'sea coast and inland fisheries' within the exclusive competence of the Dominion Parliament, the Fisheries Act of 1914 of Canada prohibiting the operation of a fish cannery for com-

mercial purposes' without taking out a license therefor was held by the Privy Council to be invalid and beyond the powers of the Dominion Legislature. It was pointed out that while effective fishery legislation might include the power to pass and enforce regulations against taking of unfit fish or against taking fish out of season to inspect fish canning or fish curing establishments or make appropriate statistical returns, it had no right to enforce a licensing system as the Act contemplated to enforce and the same could not be supported either on general grounds or on the ground that the same was incidental to effective fishery legislation. *A.-G. for Canada* v. *A.-G. for British Columbia and others*, (1930) A.C. 111.

24. Aircraft and air navigation; the provision of aerodromes; regulation and organisation of air traffic and of aerodromes.

NOTES.

There was no specific provision under the British North America Act for this subject but the Privy Council held it came under the jurisdiction of Dominion Parliament under other heads such as undertakings connecting the Provinces and extending beyond the limits of the Province, (1932) A. C. 54. The language of this item is broad and would include air-craft in rivers, minor ports and land. (*Ramaswami Aiyar, Law of Indian Constitution*).

25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

26. Carriage of passengers and goods by sea or by ai

27. Copyright, inventions, designs, trademarks and merchandise marks.

NOTES.

Cf. S. 51 (*xviii*) of Australia Constitutional Act and Ss. 91 (22) and 91 (23) of British North America Act.

28. Cheques, bills of exchange, promissory notes and other like instruments.

NOTES.

Where the primary object of a Provincial Act like the Madras Agriculturists' Relief Act, 1938, is to relieve the indebtedness of agriculturists and where agriculture and money-lending are both within the exclusive province of the Provincial Legislature the fact that the Act reduced the liability under negotiable instruments (which is an exclusive federal subject) where the maker or indorser is an agriculaurist, does not make the Provincial Act in any sense *ultra vires* of the Provincial Legislature on the ground that its provisions are repugnant to the provisions of the 'Negotiable Instruments Act'.* The same is likewise not invalid as being opposed to the provisions of the Usurious Loans Act or the provisions of Hindu Law as to debts. It could not

be the intention of Parliament in conferring a general power on the Federal Legislature to legislate in regard to negotiable instruments to reduce the power of Provincial Legislature to deal with subjects in its exclusive control. *Mada Nagarathnam* v. *Puvvada Seshayya*, (1939) 1 M.L.J. 272 (F.B.).

Negotiation which is the primary characteristic of a Negotiable Instrument is in no way prohibited by the Madras Agriculturists' Relief Act nor does it take away the liability of the maker or an indorser and hence the exclusive province of Federal Legislature is in no way trespassed upon. (*Ibid.*, p. 299).

29. Arms; firearms; ammunition.

30. Explosives.

31. Opium, so far as regards cultivation and manufacture, or sale for export.

NOTES.

Cf. Item 40 of List II. The Federal control is limited to cultivation, manufacture and sale for export.

32. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

33. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporation, whether trading or not, with objects not confined to one unit *[but not including Universities].

NOTES.

This item primarily relates to trading corporations and those with objects not confined to one unit and excludes from its sphere corporations owned, controlled or carrying on business exclusively within a Federated State.

Cf. Item 33 in the Provincial List which relates to corporations other than those mentioned in this item. Co-operative societies and unincorporated trading literary, scientific, or religious societies and associations and entry 27 of the same list which relates to trade or commerce within the province.

Under the British North America Act, items under S. 91 (15) relating to Banking and Incorporation of Banks are assigned exclusively to

*Added by S. 7 (2) (*a*) of India and Burma (Miscellaneous Amendments) Act, 1940, to make it clear that the Federal Legislature has no power by virtue of para. 33 to make any law with respect to Universities.

the Dominion while items under S. 92 (11) dealing with the Incorporation of Companies with provincial objects and those under S. 92 (13) dealing with property and civil rights in the province are both assigned to the exclusively provincial sphere. The relative sphere in which each of the units was held to operate in the Canadian Constitution has been the subject-matter of judicial consideration and the principles enunciated therein would be of considerable assistance in interpreting the Indian Constitution also.

In *John Deere Plow Co., Ltd.* v. *Wharton,* (1915) A. C. 330, Viscount Haldane, L. C., laid down the principles of construction applying to such cases. The question that arose for consideration in that case was whether under the British North America Act, an Act passed by the Provincial Legislature of British Columbia requiring a company incorporated under Dominion Legislation (for trading in agricultural implements in the whole of Canada) to take out a licence and get itself registered as a condition of carrying on business in the province was *ultra vires* of the Provincial Legislature or no. The following principles were therein laid down:

(*i*) The language of Ss. 91 and 92 cannot be construed as embodying the exact disjunctions of a perfect logical scheme. Obscurity in language must be deemed to be due not to uncertainty in general principle but 'the difficulty in obtaining ready agreement about phrases' usual in the drafting of legislative measures by 'large assemblages' and the intention of the Legislature to leave the working out of the provisions to the judicature.

(*ii*) It should be the object of a deciding Court to arrive at a reasonable and practical construction so as to reconcile the respective powers and give effect to all of them.

(*iii*) The power of Provincial Legislatures to make laws relating to incorporation of companies with provincial objects cannot extend to a company formed under the Dominion Act.

(*iv*) The power to regulate trade and commerce enables the Canadian Parliament to prescribe the extent of powers of such companies, the objects of which extend to the whole Dominion.

(*v*) It does not follow that because a Dominion company is enabled to trade in a province under S. 91 the power to regulate trade and commerce can be exercised in such a way as to trench on the exclusive jurisdiction of the Provincial Legislatures over civil rights in general. Even when a company is incorporated by the Dominion Government it is not the less subject to provincial laws of general application enacted under powers conferred under S. 92.

(*vi*) A Provincial Legislature is not entitled to pass legislation which strikes at 'Capacities which are the natural and logical consequences' of the incorporation by the Dominion Government of Companies with 'other than provincial objects'.

(*vii*) It might be competent for the Provincial Legislature to pass laws applying to companies without distinction and requiring those not incorporated in the province to register for limited purposes, *e.g.*, furnishing of information. Again provincial legislation of a general

application regulating procedure, *e.g.*, directing security of costs, might be passed but not one that interferes with the status of the Dominion Companies as such or one which prevents them from exercising powers conferred upon them by statute. In the above case the legislation was found to be *ultra vires*. On similar grounds the Provincial Act which prevented the Dominion from carrying on the business in the provinces unless registered or licensed and subjected Dominion Companeis to penalties was declared to be *ultra vires* in *Great West Saddlery Co.* v. *The King*, (1921) 2 A. C. 91 and Provincial Acts which purported to prohibit the Dominion Companies for selling their own shares within the province without the consent of a provincial commissioner were also held to be *ultra vires* it being pointed in the latter case that the effect of the legislation would have been to make the company 'still born from the moment of incorporation, sterilized in all its functions and activities, thwarted and interfered with in its first and essential endeavours to enter on the beneficial and active employment of its powers.' On the same principle it was held by the Privy Council in *Attorney-General* v. *Alberta*, 1939 P. C. 53, that 'the Act respecting the taxation of *Banks*' passed by the Provincial Legislature of Alberta was *ultra vires* and was really a part of a legislative plan to prevent the operation within the province of banking institutions carried into existence by the Dominion Parliament and was not in any sense a taxation measure for the raising of provincial revenue.

On the other side of the line may be mentioned *Lymburn* v. v. *Maryland*, (1932) A. C. 318 in which the provincial legislation prohibiting any person from trading in securities unless registered with the approval of the Attorney-General was held to be *intra vires*. It was pointed out that a Dominion Company constituted with powers to carry on a particular business is 'subject to the competent legislation of the province as to that business and may find its special activities completely penalized as by legislation against drink, traffic or by the laws as to holding land. If it is found to trade in securities there appears no reason why it should not be subject to competent laws of the province as to the business of all persons who trade in securities. As to the issue of capital there is no complete prohibition as in the Manitoba case in 1929 and no reason to suppose that any honest company would have any difficulty in finding registered persons in the province through whom it could lawfully issue its capital'. In this particular case their Lordships found there was no material upon which it could be pronounced that the functions and activities of the company were 'sterilized' or 'its status and essential capacities impaired in a substantial degree' as in the above cases and hence the Act was held to be *intra vires*.

It follows therefore that all legislation passed by a province which has the effect of 'sterilizing' or impairing the status and essential capacities of a corporation formed under a Federal Act would be *ultra vires* if passed under the colour of its authority under the head of trade and commerce within the province but would be in order if restricted and falling within the exclusively provincial sphere.

The fact that a Federal corporation confies its activities to a single province in no way takes away from its Federal character. Cf. *Colonial*

Building and Investment Association v. *A.-G. of Quebec*, (1883) 9 A.C. 157.

34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.

35. Regulation of labour and safety in mines and oilfields.

36. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.

37. The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State; Government insurance, except so far as undertaken by a Federated State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province.

38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

NOTES.

Under the British North America Act the word 'Bank' is defined as 'a corporation or joint stock company other than the Bank of Canada' wherever incorporated for the purpose of doing banking business or the business of a Savings Bank and which transacts such business in the province whether the head office is situate in the province or elsewhere' and under S. 91 of the Act 'banking' and 'Savings Banks' are within the exclusive legislative authority of the Dominion. In *A.-G. of Alberta* v. *A.-G. of Canada*, 1939 P. C. 53, when the Alberta Legislature wanted to impose a tax of half a per cent. on the paid up capital and one per cent. on the reserve fund and undivided profits on every bank on the ground that it could be brought under the head of direct taxation in the province for the raising of a revenue for provincial purposes under S. 92 of the Act the Bill attempting to impose the tax was held to be *ultra vires*. Their Lordships put the matter thus, 'under the guise of discriminatory legislation in the province it would be very easy not only to impair but even render wholly nugatory the exclusive legislative authority of the Dominion over a number of the classes of subjects specifically mentioned in S. 91 by making them valueless. Instances could be found in bills of exchange, and promissory notes, patents and copy rights which could be so heavily taxed as entirely to destroy their use as well as their value in the province'. Their Lordships held it was strange that banks and savings banks were singled out (and no other wealthy corporation) for raising revenue for provincial purposes and referred to the gigantic increase in the taxation

of banks within the province and the prohibitive character of the same. The magnitude of the tax was such that if the other provinces followed Alberta it would have the effect of preventing banks from carrying on their businesses. Discussing the question of *ultra vires* their Lordships observed: 'It would be strange if each of the provinces were successively to tax banks and the result on the question of *ultra vires* were to be that the Acts of those provinces who were earliest in the field were valid, whilst the Acts of those who came a little later were to be held *ultra vires*'. The Bill attempted to be enacted was held to be 'part of a legislative plan to prevent the operation within the province of those banking institutions which have been called into existence and given the necessary powers to conduct their business by the only proper authority, the Parliament of Canada'. The decision in *Bank of Toronto* v. *Lambe*, (1887) 12 A. C. 575 : 56 L. J. P. C. 87 was distinguished on the ground that in that case the taxation was attacked as one not within the province and not a direct taxation and not as one calculated to encroach upon the province of the Dominion. Again it was pointed out that in that case the taxes were not directed against any particular class of business or employment but on every bank, insurance company, incorporated company, carrying trade, labour or other business and on a number of other specified companies and it was never suggested that the taxation was such as would in any way hamper the Dominion in the exercise of its powers under S. 91. The Judicial Committee in the above case *Toronto* v. *Lambe*, only refused to add a proviso to S. 91 to the effect that 'if a power expressly given to the provinces is capable by a particular and unusual application, of infringing a power given to the Parliament of Canada, no similar use of the provincial power, however moderate can be permitted under any circumstances'. The case only decided that the British North America Act did not assume a misuse of the provincial powers was likely to occur and did not provide for the same and that a legislative power cannot be refused simply because an improvident exercise of the same might bring it into conflict with the power of the Dominion. The above principles apply in the case of any legislation by the provinces in regard to banking under this head.

39. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.

40. Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly; the salaries, allowances and privileges of the members of the Federal Legislature; and, to such extent as is expressly authorised by Part II of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature.

42. Offences against laws with respect to any of the matters in this list.

43. Inquiries and statistics for the purposes of any of the matters in this list.

44. Duties of custom, including export duties.

45. Duties of excise on tobacco and other goods manufactured or produced in India except—

(*a*) alcoholic liquors for human consumption;

(*b*) opium, Indian hemp and other narcotic drugs and narcotics, non-narcotic drugs;

(*c*) medicinal and toilet preparation containing alcohol, or any substance included in sub-paragraph (*b*) of this entry.

NOTES.

Excise originally meant a toll or tax; since the 17th century it has come to mean a tax on articles of luxury, especially in the United Kingdom in contradistinction to customs duties levied on imported articles. It was later applied to licence fees on excisable articles which came to be known as duties of excise. "Its primary and fundamental meaning,' as Gwyer, C. J., pointed out in In re *C. P. Motor Spirit Act*, 1939 F.C. 1, 'in English is still that of a tax on articles produced or manufactured in the taxing country and intended for home consumption." The same is its meaning in India. Legislation to impose duties of excise under this head should be restricted to power to impose duties only at the stage of manufacture or production and not any further.

46. Corporation tax.

NOTES.

For the definition of 'corporation tax' substituted by the India and Burma (Miscellaneous Amendments) Act, 1940. *See* S. 1 of that Act.

47. Salt.

48. State lotteries.

49. Naturalisation.

50. Migration within India from or into a Governor's Province or a Chief Commissioner's Province.

51. Establishment of standards of weight.

52. Ranchi European Mental Hospital.

53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.

54. Taxes on income other than agricultural income.

*[54-A. The matters specified in the proviso to sub-section (2) of section 142-A of this Act as matters with respect to which provision may be made by laws of the Federal Legislature.]

NOTES.

The distribution of the legislative power in regard to taxation between the Federation and the Provinces under the Government of India Act is based on the nature of the taxes levied whether they relate to the Federation or the Provinces and not as in the case of Canada or Australia based on the classification of 'direct' and 'indirect' taxation. Thus import and export duties on customs frontiers (Item 19), duties on customs (Item 44), duties of excise on tobacco and other goods manufactured in India, taxes on non-agricultural income (Item 54), taxes on the capital value of assets of individuals and companies and the capital of companies (Item 55), succession duties (Item 56), terminal taxes on goods and passengers travelling by railway or air and taxes on railway fares and freights (Item 58), and all fees generally in regard to matters in the Federal List, come within the Federal Sphere of taxation while alcoholic liquors for human consumption, opium, Indian hemp and drugs narcotic and non-narcotic and medicinal and toilet preparations (Exception to Item 45), taxes on agricultural income (Exception to Item 54), and on the value of agricultural land (exception to Item 55), succession duties in regard to agricultural land (exception to Item 55), are all assigned to the Provincial Sphere of taxation. Items 41, 42 and 43 of the Provincial List include the exceptions noted in the Federal List above and in addition taxes on mineral rights subject to Federal Legislation regarding mineral development (Item 44). Capitation taxes

*Inserted by India and Burma Miscellaneous Amendment) Act 1940.

(Item 45), taxes on professions, trades, etc., (Item 46), taxes on animals and boats (Item 47), taxes on the sale of goods and advertisements (Item 48), cesses on goods entering a local area for consumption (Item 49), taxes on luxuries (Item 50), dues on passengers and goods carried on inland waterways (Item 52) and Tolls (Item 53) and fees in respect of matters included in the Provincial List are all assigned exclusively to the provinces. The rates of stamp duty in regard to negotiable instruments, bills of lading, letters of credit, policies of insurance, proxies and receipts again fall under the exclusively Federal Sphere (*vide* Item 57 of Federal List) and the Provincial Legislatures are empowered to legislate as regards the stamp duty on documents in all other cases (*vide* Item 51 of the Provincial List). Stamp duties other than those collected by means of judicial stamps, is a subject in the concurrent list (*vide* Item 13 in Part I of List III).

Sections 154 and 155 of the Constitution Act relate to exemptions of certain public property for taxation. Property vested in His Majesty for purposes of the Government of the Federation (subject to any Federal law to the contrary) is exempt from taxation by a Province or a Federated State. An exception is made however in cases where such property was liable to a tax prior to the formation of the autonomous provinces and in such a case the property shall continue to be so liable till the tax itself is abolished. A Federal Law may abolish the same earlier of it so chooses. Likewise federal taxes cannot be levied on lands or buildings in or on income arising in British India of a province or the Ruler of a Federated State. Here again an exception is made in cases where a Provincial Government carries on trade outside its limits or the Ruler of a State carries on trade anywhere in British India. In such cases federal taxation can be levied to the extent of the trade or business carried on, on the income arising therefrom or on the property on which the same is carried on. The personal property of a Ruler and his personal income are likewise liable to federal taxation except in regard to Government of India Securities exempt from tax at the date of the passing of the Constitution Act. For the right of provinces to tax salary of a Federal Officers, *vide* notes under Item 46, Provincial List. In a recent case *The Judges* v. *Attorney-General for Saskatchewan*, (1937) Wn. 109, it was held that the state could tax the salaries of Judges appointed under S. 96 of the British North America Act notwithstanding the fact S. 100 of that Act stipulated that their salaries shall be 'fixed'. It was pointed out referring to and relying upon the earlier decisions that judicial emoluments were like any other emoluments and were in no way distinguishable therefrom and there was no paramount principle which exempted such emoluments from provincial taxation in terms wide enough to affect all incomes. Their Lordships in the above case discarded the theory that judicial emoluments should be untouched by taxation to keep up judicial independence and integrity. As they put it 'there was no foundation in the realities of the situation for any such conception. Neither the independence nor any other attribute of the judiciary could be affected by a general income-tax which charged their official incomes on the same footing as the income of the other citizens. It is submitted the same view applies to taxation under the Government of India Act.

The Federal Government has an undoubted right to tax all incomes excepting only agricultural incomes. The question whether (taxes on professions, trades, callings and employments falling under Item 46 of the Provincial List could not be legislated upon by the provinces by virtue of their relating to Item 54 on the Federal List which relates to taxes on income (other than agricultural income) was set at rest by the India and Burma (Miscellaneous Amendments) Act, 1940. The Amending Act introduces into the body of the Government of India Act, 1935, S. 142-A which runs as follows:—

"142-A. (1) Notwithstanding anything in section 100 of this Act, no provincial law relating to taxes for the benefit of a province or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

(2) The total amount payable in respect of any one person to the province or to any one municipality, district board, local board, or other local authority in the province by way of taxes on professions, trades, callings and employments shall not, after the thirty-first day of March, 1939, exceed fifty rupees per annum:

Provided that, if in the financial year ending with that date there was in force in the case of any province or any such municipality, board or authority a tax on professions, trades, callings or employments the rate, or the maximum rate, of which exceeded fifty rupees per annum, the preceding provisions of this sub-section shall, unless for the time being provision to the contrary is made by a law of the Federal Legislature, have effect in relation to that province, municipality, board or authority as if for the reference to fifty rupees per annum there were substituted a reference to that rate or maximum rates, or such lower rate, if any, (being a rate greater than fifty rupees per annum) as may for the time being be fixed by a law of the Federal legislature; and any law of the Federal Legislature made for any of the purposes of this proviso may be made either generally or in relation to any specified provinces, municipalities, boards or authorities.

(3) The fact that the Provincial Legislature has power to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting, in relation to professions, trades, callings and employments, the generality of the entry in the Federal Legislative List relating to taxes on income."

The amendment has thus the effect in the first place of validating or removing the doubt as to the validity of provincial legislation relating to the levy of taxes for the benefit of a province or a municipality, district board, local board or other local authority in regard to professions, trades, etc., and to keep alive a right which the Provincial Governments had exercised in the past for levying rates for local purposes. Neither the fact that these taxes may relate to income falling under this item (Item 54) nor the supremacy of the Federal Legislature

over the Provincial Legislature in matters falling under the exclusively federal sphere under S. 100 of the Constitution Act can stand in the way of valid provincial legislation being passed in regard to the subjects mentioned in Item 46 of the Provincial List.

Sub-clause (2) of S. 142-A, however, limits to the amount payable by a person to the province or the local body by way of profession or other tax referred to above to a sum not exceeding Rs. 50 after the 31st March, 1939 and the proviso to the same preserves in force the profession, etc., taxes being levied in the financial year ending with 31st March, 1939, though they may be being levied at a higher rate than Rs. 50 per annum. The Federal Legislature is empowered to introduce suitable legislation to regulate the levy of the said profession and other taxes at such rates higher than Rs. 50 as it may deem fit. The federal legislation may be general or directed to particular provinces or local bodies.

Sub-clause (3) emphasises the undoubted right of the Federal Legislature to legislate on taxes relating to income including those arising from professions, trades, etc., and the limited right conferred on the provinces is not to be deemed in any way to take away from the general right of the Federal Legislature. S. 17 of the India and Burma (Miscellaneous Amendments) Act, 1940 enacts that the amendments made by that Act whether by way of substitution, addition or omission shall be deemed to have been made in the Government of India Act, 1935 so far as that Act is concerned immediately before the passing of that Act except in cases where the said Act of 1940 provides from the coming into operation of the said substitution, etc., on any date subsequent to that Act.

Vide also notes to Item 46 of the Provincial List.

55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

56. Duties in respect of succession to property other than agricultural land.

57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.

58. Terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights.

59. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST II.

PROVINCIAL LEGISLATIVE LIST.

Introductory.

"The method adopted by the White Paper (following in this respect the broad lines of Dominion Federal Constitutions) is to distribute legislative power between the Central and Provincial Legislatures respectively, and to define the Central and Provincial spheres of government by reference to this distribution. In Appendix VI, List II, of the White Paper are set out the matters with respect to which the Provincial Legislatures are to have exclusive legislative powers, and the sphere of Provincial Autonomy in effect comprises all the subjects in this list. The subjects in List II (the exclusively Provincial List) represent generally with certain additions those which the Devolution Rules under the Act of 1919 earmarked as "Provincial subjects" and we are of opinion that in its broad outline the list provides a satisfactory definition of the provincial sphere". (*See* Para. 50 of Report of Joint Parliamentary Committee Report.)

1. Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power); the administration of justice; constitution and organisation of all Courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subject to such detention.

2. Jurisdiction and powers of all Courts except the Federal Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.

3. Police, including railway and village police.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other units for the use of prisons and other institutions.

5. Public debt of the Province.

6. Provincial Public Services and Provincial Public Service Commissions.

7. Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues.

8. Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province.

9. Compulsory acquisition of land.

10. Libraries, museums and other similar institutions controlled or financed by the Province.

11. Elections to the Provincial Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

12. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy President thereof, the salaries, allowances and privileges of the members of the Provincial Legislature; and, to such extent as is expressly authorised by Part III of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Provincial Legislature.

13. Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

14. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.

15. Pilgrimages, other than pilgrimages to places beyond India.

16. Burials and burial grounds.

17. Education *[including universities other than those specified in paragraph 13 of List 1.]

18. Communications, that is to say, roads, bridges, ferries and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways; municipal tramways; ropeways; inland

*Substituted by India and Burma (Miscellaneous Amendments) Act, 1940.

waterways and traffic thereon subject to the provisions of List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.

20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle trespass.

NOTES.

Agriculture: Agriculture being an exclusively provincial subject a Provincial Legislature is entitled under this head and under the head of money-lending (Entry 27) to legislate for relief of agricultural indebtedness by the wiping out in part and reducing to a large extent the interest due on promissory notes or other contracts entered into by agriculturists whether they have merged into a decree or no. *Cf.* The Madras Agriculturists' Relief Act (IV of 1938) and the similar legislation passed in the other British Indian Provinces.

21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates; treasure trove.

NOTES.

This confers exclusive power to legislate on 'devolution' of agricultural land which includes 'intestacy and succession' as regards such land specially read with Item 7 of the concurrent Legislative List. A major part of India being agricultural, this item is likely to lead to exclusive legislation by the provinces in regard to matters of all-India importance. The object of including this in the provincial list might have been to vest the power of restricting alienations of agricultural land in the provinces which is so necessary to the provinces but the language employed is much wider and may need amendment. In his latest edition of Mayne's Hindu Law and Usage, Sri S. Srinivasa Iyengar has expressed the opinion that the Amending Act relating to the Hindu Women's Right to Property Act (XVIII of 1937) is *ultra vires*, so far as it relates to agricultural lands in the provinces and needs to be supplemented by provincial legislation (*vide* Mayne on Hindu Law and Usage by Sri S. Srinivasa Iyengar, p. 725).

22. Forests.

23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.

24. Fisheries.

25. Protection of wild birds and wild animals.

NOTES.

'Wild birds' include migratory birds also and the provinces alone have exclusive power to legislate in regard to wild birds and wild animals. The object is to preserve and protect wild birds and animals and to prohibit their killing and sale.

Cf. the Nilgiris Game and Fish Preservation Act (Madras Act II of 1879) and Wild Elephants Preservation Act (I of 1873).

Where any treaty is entered into between the Federation and any other Country in regard to the protection of migratory birds the assent of the Province or the State to whose territory the birds may migrate or in which having migrated they may reside, would be necessary for passing valid legislation on that subject.

In the United States of America the question arose as to the validity of legislation passed to give effect to a treaty entered into between the United States of America and Great Britain for the protection of migratory birds. It was pointed out in one case that the protection of wild birds was a natural interest of first magnitude and the subject-matter was only transitorily within a state and had no permanent habitat therein.

The United States passed an Act in pursuance of the treaty prohibiting the killing, capturing or selling of such migratory birds but the State of Missouri challenged the legislation (Migratory Bird Treaty Act) on the ground that it interfered with its sovereign rights in regard to 'Migratory birds' over which it had exclusive authority. It was held, however, by Justice Holmes that as between a State and its inhabitants the former had an exclusive right to regulate the killing and the sale of birds but its authority was not exclusive of the paramount power. The learned Judge remarked 'Wild birds are not in the possession of any one and possession is the beginning of ownership. The whole foundation of State rights is the presence within their jurisdiction of birds that yesterday had not arrived, and to-morrow may be in another State and in a week thousands of miles away' ..... It was held that treaties entered into regarding wild birds were binding on the states as well as throughout the United States. The treaty and the statute were held to be valid. [*See* Lecture IV on Federal Court and Justiceable Disputes in (1939) 1 M.L.J. page 5 by *C. Unikanda Menon* and also *Missouri* v. *Holland*, 252 U. S. 416 and *Baldwin* v. *Frank*, 120 U. S. 678, 685.]

26. Gas and gasworks.

27. Trade and commerce within the Province; markets and fairs; money-lending and money-lenders.

NOTES.

Provincial legislation providing for the discharge or partial reduction of interest on loans including those covered by negotiable instruments entered into or executed by 'agriculturists' is *intra vires* and cannot be challenged as invalid on the ground that it relates to Negotiable Instruments (an exclusively Federal subject) or as being opposed to the existing Indian Law embodied in the Negotiable Instruments Act, 1881, or the Usurious Loans Act. Where the effect of the legislation is to relieve the indebtedness of agriculturists and to assist them in preserving their agricultural lands to some extent at least and to prevent their passing into non-agricultural hands, the object of the legislation must be deemed to be one relating primarily to agriculture and money-lending and not one affecting the principles embodied in the Negotiable Instruments Act simply because there is a prohibition against the full amount of interest due being realised by the creditor. The Madras Agriculturists' Relief Act IV of 1938 is substantially within the express powers conferred on the Provincial Legislature and the fact that in some cases it may operate to reduce liability on contracts or negotiable instruments does not in any way touch its validity. *Mada Nagaratnam* v. *Puvvada Seshayya*, (1939) 1 M.L.J. 272.

Promissory notes and negotiable instruments may be dealt with in their aspect relating to negotiation and liability of the maker or indorsee when they fall under the exclusively Federal sphere (*vide* Item 28 of the Federal List) and when they form part of contracts dealing with agricultural indebtedness may fall under other heads which are exclusively Provincial (*vide* entries 20 and 27 of the Provincial List). A subject may thus for one purpose and in one aspect fall within the powers of a Federal Legislature while in another aspect and for another purpose fall within the powers of a State or Provincial Legislature and the nature and scope of the legislative enactment have to be examined with reference to the actual facts to determine within what sphere the legislative enactment falls. Cf. *John Deere Plow Company, Ltd.* v. *Wharton*, (1915) A.C. 330 at 339; *Gallagher* v. *Lynn*, (1937) A.C. 863; *Shannon* v. *Lower Mainland Dairy Products Board*, (1938) A. C. 708 quoted in the Madras Full Bench case above referred to.

28. Inns and innkeepers.

29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods; weights and measures.

31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.

32. Relief of the poor; unemployment.

33. The incorporation, regulation, and windingup of corporations *[not being corporations specified in List I or Universities], unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

34. Charities and charitable institutions; charitable and religious endowments.

35. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

36. Betting and gambling.

37. Offences against laws with respect of any of the matters in this list.

38. Inquiries and statistics for the purpose of any of the matters in this list.

39. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

40. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

(*a*) alcoholic liquors for human consumption;

(*b*) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

(*c*) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (*b*) of this entry.

41. Taxes on agricultural income.

42. Taxes on lands and buildings, hearths and windows.

NOTES.

Cf. Items 54 and 55 of the Federal Legislative List.

In the recent Full Bench decision of the Bombay High Court reported in *Sir Byramjee Jeejee Bhoy* v. *Province of Bombay and others,*

*Substituted by S. 7 (2) (*b*) of the India and Burma (Miscellaneous Amendments) Act, 1940.

A.I.R. 1940 Bom. 65: 42 Bom.L.R. 10, the question was considered whether the urban immovable property tax levied by S. 22 forming part of Part 6 of Bombay Finance Act, 1932, the material portions of which were added by the Bombay Finance Act, 1939, was a tax on income or on the capital value of lands and buildings falling within the Federal Legistive sphere and whether Part 6 of the Finance Act aforesaid was on that account *ultra vires* of the Provincial Legislature of Bombay and the said tax an invalid tax. The urban immovable property-tax was a tax levied on buildings or lands at ten per cent. of the annual letting value of such buildings or lands (S. 22) and according to the proviso it was enacted the tax shall be levied and paid to the Provincial Government at the rate of five per cent. of the annual letting value in the City of Bombay on buildings or lands the annual letting value of which does not exceed Rs. 2,000. The plaintiff in the case, the owner of immovable properties in Bombay, filed a suit against the Provincial Government and others for a declaration *inter alia* that the said Part 6 of the Bombay Finance Act was *ultra vires* of the Bombay Provincial Legislature and the urban immovable property tax was illegal and invalid. In dismissing the plaintiff's suit with costs the Full Bench had to consider whether a tax on lands and buildings such as the tax in question was a 'tax on income other than agricultural income' included in Item 54 of the Federal Legislative List, or "a tax on the capital value of the assets, exclusive of agricultural land, of individuals and companies" included in Item 55 of the same list or was really a tax "on lands and buildings, hearths and windows" included in Item 42 of the Provincial List. In holding the latter view His Lordship, C. J., Beaumont, pointed out that neither of the considerations advanced before His Lordship, *viz.*, the fact that the impugned tax was graded by reference to the annual value of the property charged and provision made for rules for making allowance in respect of vacant properties, nor the fact that the basis of the tax was the same as that of income-tax from property as imposed under Ss. 6 and 9 of the Income-tax Act were decisive of the real nature of the tax levied and they certainly did not point to the impugned tax being one on 'income'. A statute imposing income-tax, *i.e.*, a tax on total income, is none the less income-tax because it is assessed on the annual value of the land and not on the actual income. But it does not follow from that proposition that every statute which charges a tax in relation to annual value of land is charging a tax on income. *Prima facie*, a tax on the annual value of land is not a tax on income. The impugned tax in the above case was charged on lands and buildings and based on an estimated rent which bore very little relation to the actual income. 'An allowance of ten per cent. for repairs' it was pointed out, in the case 'may be an inadequate allowance in the case of an old building; the property may be subject to mortgages the interest on which absorbs the whole of the income; or it may be subject to an onerous lease which produces less rent than the property could be let for at the time'. The Provincial Legislature in levying the impugned tax did not purport or desire to tax income but intended to levy a tax of ten per cent. on the rateable value on the owner of particular lands and buildings. His Lordship held it was justifiable in construing the terms of the Government of India Act, 1935,

to refer to the legislative practice obtaining in England and in India at the time the Constitution Act was passed and relied upon the fact that taxes' on lands and buildings imposed primarily on the owner and made a charge on such lands and buildings had been for a long time a well recognised form of taxation in India in municipal affairs as appeared from the several Municipal Acts of the different provinces and the same also pointed to the provincial character of the tax levied in the case in question. It was also pointed out that the urban immovable property tax could in no sense be deemed to be a tax on the capital value of the lands and buildings falling under Item 55 of the Federal List. Justice Broomfield pointed out that the omission from the Bombay Act of any allowance for outgoings as interest on mortgages (as under S. 9 of Income-tax Act) could only be explained on the footing that the basis of the tax in the case was something non-dependent on the income of the assessee, and that it was based on a somewhat arbitrary but no inequitable standard and that the consideration that the tax might constitute an unfair burden on the taxpayer was not a relevant consideration in deciding the matter. Justice Kania referred to the points of similarity between the impugned tax and income-tax. "First both are direct taxes. Under both the owner is liable. Even when a provision is made for recovery of the property-tax from the occupier the ultimate liability of the owner is emphasised and a right to reimburse is given. Secondly even a vacant plot of land is taxed under both on the footing of its annual letting value. In respect of a property occupied by the owner himself the tax is payable under both the Acts on the footing of an arbitrary basis. *viz.*, the annual letting value. Under both Acts exemption is given to owners whose income or profits are below stated figures. Under both Acts an arbitrary standard is adopted for the purpose of determining the amount of tax payable'. The points of distinction in the case of Income-tax Act were also noted to be (1) absence of any charge on the property, (*ii*) exclusion of business property, (*iii*) allowances for repairs on a fixed percentage, interest on mortgages, land-revenue, collection charges, insurance premia, etc., and (*iv*) inclusion of income from property outside the province. Neither the points of similarity nor those of distinction, however were useful in determining the nature of the tax and whether it was really a tax on 'income' or no.

Income-tax connoted 'a periodical monetary return' 'coming in' with some sort of regularity or expected regularity from definite sources. Vide *Income-tax Commissioner* v. *Shaw, Wallace and Co.*, A.I.R. 1932 P. C. 138=59 I.A. 206=59 Cal. 1343 (P.C.). It was a tax on income, nor meant to be a tax on anything else, was a single tax and not a collection of taxes, essentially distinct. Vide *London County Council* v. *Attorney-General*, (1901) A.C. 26. It is intended to be a tax on a person's income or annual profits and although imposed on the annual value of the land, the arrangement is only a means or machinery devised by the Legislature for getting at the profits. On the other hand a poor rate or (a municipal tax) is levied in respect of the occupation of hereditament irrespective of a person's income generally and irrespective of whether the rate payer is in fact deriving profits or

gains from such occupation. Vide *a reference under the Government of Ireland Act*, 1920, (1936) A.C. 352. As was observed in the above case 'a dwelling house is a burden, not a source of profit, for the occupier, who pays rent for it. He is rated on the value of the burden, while he remains unrated in respect of his whole profits, be they from business or from investments. In their Lordships' opinion this marks the essential difference in character between income-tax and rates and it is unnecessary to consider other and less important differences between them.' The determining test therefore is whether the tax in question is a tax on the lands and buildings themselves and the assessment is on a standard named by the Legislature which is or may be fluctuating (*vide* observations of Kania, J., in the above Full Bench case at page 74). The measure of the tax or the standard on which it is based is no determining factor. The power to tax lands and buildings has existed in Provincial Legislatures for several years before the Government of India Act, 1935 was passed and it is only reasonable to think that it is not intended to be curtailed by the said Act. The urban immovable property tax was one that could be validly levied by the provinces and was not a tax on income within the meaning of Item 54 of the Federal Legislative List.

43. Duties in respect of succession to agricultural land.

44. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development.

45. Capitation taxes.

46. Taxes on professions, trades, callings and employments. *[subject to the provisions of section 142-A of this Act.]

NOTES.

Cf. Entries 54 and 55 of the Federal List which deal with taxes on income other than agricultural income and taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies and taxes on the capital of companies.

The Provincial Legislature alone has thus an exclusive right to levy a tax on agricultural incomes and on the capital value of agricultural land that may be owned by individuals or companies. This is because agriculture (Item 20), land (Item 21), and trade and commerce within the province (Item 27) are exclusively provincial subjects. The Doctrine of 'the Immunity of Instrumentalities' or of 'Implied Prohibition' not being applicable in the construction of the Government of India Act, 1935, the legislative power exclusively granted to a province cannot be denied to it because it may be abused or may limit the range

*Substituted by the India and Burma (Miscellaneous Amendments) Act, 1940.

which otherwise would be open to the Federal Legislature. *Bank of Toronto* v. *Lambe*, (1887) 12 A. C. 575. Thus under the British North America Act, 1867, the City of St. John, New Brunswick was held to have rightly assessed to tax a customs officer of the Federal Government under the exclusive power conferred on it under the head 'Municipal institutions in the province. *Abbot* v. *City of St. John*, (1908) 40 S.C.R. 597 and the Province of Manitoba was held to have full power to levy income-tax on a civil servant employed in the Dominion Department of Agriculture. *Forbes* v. *A.-G. for Manitoba*, (1937) A. C. 260. It is not permissible, however, for provincial legislation to 'impair or sterilize' the status and capacity of bodies or institutions which are in the exclusive Federal List and hence within the exclusive legislative power of the Federal Legislature. *John Deere Plow Co.* v. *Wharton*, (1915) A. C. 330. See also *Great West Sadlery Co.* v. *The King*, (1921) 2 A.C. 91 and *A.-G. for Manitoba* v. *A.-G. for Canada*, (1929) A. C. 260. In *A.-G. of Alberta* v. *A.-G. of Canada*, 1939 P. C. 53 while explaining the earlier decision reported in the *Bank of Toronto* v. *Lambe*, (1887) 12 A. C. 575, their Lordships of the Privy Council held that where any statute passed by a Provincial Legislature is a deliberate legislative plan to prevent the operation within the province of institutions which have been created and given necessary powers by the Federal Parliament, such a statute would be *ultra vires* of the Provincial Legislature. In the above case taxation was aimed simply at Banks including Savings Banks within the exclusive authority of the Dominion Legislature (*cf.* Item 38 in the Federal List which also vests the right to legislate in regard thereto in the Federal Legislature) which were singled out 'for the purpose of raising of revenue for provincial purposes' and other wealthy corporations and persons were not touched and there was 'gigantic increase in taxation' of banks within the province which was not only considered prohibitive by their Lordships of the Privy Council but was such as must have been known to be prohibitive by the Provincial Legislature. The Privy Council further held in that case that the learned Judges of the Supreme Court of Canada 'were justified in considering that the magnitude of the tax proposed for Alberta was such that if it were applied by each of the other provinces it would have the effect of preventing banks from carrying on their business.' Their Lordships further observed that it would be strange if each of the provinces were successively to tax banks and the result of the question of *ultra vires* were to be that the Acts of those provinces who were earliest in the field were valid, whilst the Acts of those who came a little later were held to be *ultra vires*. Another fact noticed by their Lordships in finding the legislation to be invalid was that the tax proposed in the above case was based on paid-up capitals and the reserve funds of the banks wherever they might be situated. In *Lambe's case*, however, the tax levied by the province was directed against not banks merely but on all insurance and incorporated companies of all kinds carrying on any labour trade or business in the province and on a number of other specified companies and the tax was not such as hampered the Dominion for exercising its powers under S. 91, British North America Act. *Vide* 1939 P.C. 53 at 58.

The competency of the Provincial Legislatures to levy a tax on incomes under this head was brought to the forefront by the Provincial Legislature of the United Provinces passing the United Provinces Employment Tax Bill, 1939. Representations were made by the Upper India Chamber of Commerce, the Bengal Chamber of Commerce, and the Associated Chambers of Commerce to the Viceroy and the Governor-General of India against the enactment being passed into law on the ground that it was not the intention of the Joint Committee on Indian Constitutional Reform to place it within the competence of a Provincial Legislature to impose a taxation measure which in any way depended in its application on the income or emoluments of the subjects and that the matter should be referred by His Excellency to the Federal Court under the powers conferred on him by S. 213 of the Government of India Act, 1935, and for steps being taken for the amendment of the Government of India Act. It was also pressed upon His Excellency's attention that the determination of the question would throw light on the validity of the Bengal Finance Bill, 1939, which imposed an annual ungraded tax of Rs. 30 on every person assessed to income-tax under the Indian Income-tax Act, 1922 in the preceding financial year in respect of earnings of any profession, trade, callings or employment pursued wholly within the province either by himself or his representative or agent. As opposed to the flat rate levied in Bengal, the United Provinces Employments Tax Bill imposed a graduated tax which in essence did not differ from income-tax.

To resolve this difficulty and dispute legislation was introduced in the British Parliament amending the Government of India Act whereby a limit is placed on the amount which might be levied on any individual in any one year under the heading of tax upon trades, professions, calling or employment (in the Act it is put at Rs. 50 except in the case of provinces or local bodies in which the tax was being levied at higher rates prior to 31st March, 1939) and the character of the tax is restricted to that of an impost which it originally possessed and from which it was never intended that it should depart. It was pointed out by Lord Zetland in the course of the passage of the Bill that a distinction was always intended to be drawn between taxes on income on one hand and taxes on professions, trades, callings and employments on the other. 'Taxes on income other than agricultural income were a Federal source of revenue, whereas taxes on professions, trades, callings and employments were a provincial source of revenue. It was never intended that taxes under these provincial heads should be so imposed as to constitute an income-tax and so trespass on the central field of revenue' ..... 'The main purpose in view when these headings were included in the Provincial List was to keep alive a right which Provincial Governments had exercised in the past empowering local authorities such as Municipalities and District Boards to levy rates for local purposes which were commonly described as taxes on professions, circumstances and property. It was of course characteristic of these taxes that their incidence upon the individual taxpayer was a very small one. Experience had shown however that it was possible to levy taxes under these heads which in fact were nothing less than an income-tax in disguise; for some little time ago, the Legislature of the United Provinces enacted a taxing Bill under the

heading 'Employment-tax' which was in fact nothing more than an income-tax. It would be imposed on the incomes concerned of all those who derived their income from employment as a substantial graduated tax which in respect of a large part of the incomes concerned would have amounted to as much as ten per cent'.

For the provisions of India and Burma (Miscellaneous Amendment) Act 1940 *see* notes to Item 54 of the Federal List. In view of the amendment, the U. P. Employment Tax Bill was not assented to by the Governor-General and was prevented from becoming law.

47. Taxes on animals and boats.

48. Taxes on the sale of goods and on advertisements.

*__48-A.__ Taxes on vehicles suitable for use on roads, whether mechanically propelled or not, including tram cars.

*__48-B.__ Taxes on the consumption or sale of electricity, subject, howevee, to the provisions of section on hundred and fifty-four A of this Act.

NOTES.

A 'Sales Tax' comprehends much more than 'tax on the sale of goods' and is different in several respects from a 'turn over tax'. *Vide* In re *Motor Spirit Act*, 1939 F.C. 1. It would be an undue straining of language to state that it can mean only a 'turn over' tax and no more. In a conflict between the United Provinces and Government of India as regards the exclusive right of the Government of India to levy taxes on the sale of goods, it was held by the Federal Court in the above case that the Central Legislature had the power to impose duties on excisable articles before they became part of the general stock of the province, *i.e.*, at the stage of manufacture or production and the Provincial Legislature had exclusive power to tax sales thereafter. *Vide* observations of Gwyer, C. J., in 1939 F. C. 1 at p. 11. The Central Provinces and Berar Sales of Motor Sprit and Lubricants Taxation Act, 1938, seeking to levy a tax on the retail sales of Motor Spirits and Lubricants was held to be *intra vires* of the Provincial Legislature of Central Provinces and Berar.

Section 154-A referred to in para. 48-B above inserted by the Amending Act of 1940 runs thus:

"Exemptions from taxes on electricity.

154-A. Save in so far as any Federal Law may otherwise provide, no provincial law or law of a Federated State shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity (whether produced by a Government or other persons) which is—

*Inserted by India and Burma (Miscellaneous Amendments) Act 1940.

(*a*) consumed by the Federal Government, or sold to the Federal Government for consumption by that Government; or

(*b*) consumed in the construction, maintenance or operation of a Federal Railway by the Federal Railway Authority or a railway company operating that Railway, or sold to that Authority or any such railway company for consumption in the construction, maintenance or operation of a Federal Railway;

and any such law imposing, or authorising the imposition of, a tax on the sale of electricity shall secure that the price of electricity sold to the Federal Government for consumption by that Government, or to the Federal Railway Authority or any such railway company as aforesaid for consumption in the construction, maintenance or operation of a Federal Railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity".

49. Cesses on the entry of goods into a local area for consumption, use or sale therein.

50. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

51. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

52. Dues on passengers and goods carried on inland waterways.

53. Tolls.

54. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST III.

CONCURRENT LEGISLATIVE LIST.

INTRODUCTORY.

Necessity for a Concurrent List.

"There is, however, another List (Appendix VI, List III), in which are set out a number of subjects with respect to which it is proposed that the Central Legislature shall have a power of legislating concurrently with the Provincial Legislatures, with appropriate provision for resolving a possible conflict of laws. Experience has shown, both in India and elsewhere, that there are certain matters which cannot be allocated exclusively either to a Central or to a Provincial Legislature, and for which, though it is often desirable that

provincial legislation should make provision, it is equally necessary that the Central Legislature should also have a legislative jurisdiction, to enable it in some cases to secure uniformity in the main principles of law throughout the country, in others to guide and encourage provincial efforts, and in others again to provide remedies for mischiefs arising in the provincial sphere but extending or liable to extend beyond the boundaries of a single province. Instances of the first are provided by the subject-matter of the great Indian Codes of the second by such matters as labour legislation, and of the third by legislation for the prevention and control of epidemic disease. It would in our view be disastrous if the uniformity of law which the Indian Codes provide were destroyed or whittled away by the unco-ordinated action of Provincial Legislatures. On the other hand, local conditions necessarily vary from province to province, and Provincial Legislatures ought to have the power of adapting general legislation of this kind to meet the particular circumstances of a province". (*Vide* Para. 51 of the Joint Parliamentary Committee.).

J. P. C. on the Problems of the Concurrent List.

"We turn now to the problems presented by the Concurrent List. We have already explained our reasons for accepting the principle of a Concurrent List, but the precise definition of the powers to be conferred upon the centre in relation to the matters contained in it presents a difficult problem. In the first place, it appears to us that, while it is necessary for the centre to possess in respect of the subjects included in the list a power of co-ordinating or unifying regulation, the subjects themselves are essentially provincial in character and will be administered by the provinces and mainly in accordance with provincial policy; that is to say, they have a closer affinity to those included in List II, than to the exclusively federal subjects. At the same time, it is axiomatic that, if the concurrent legislative power of the centre is to be effective in such circumstances, the normal rule must be that, in case of conflict between a central and a provincial Act in the concurrent field, the former must prevail. But an unqualified provision to that effect would enable an active centre to oust provincial jurisdiction entirely from the concurrent field, and would thus defeat one of the main purposes of the latter. We have already expressed our approval of the device adopted in the White Paper for the purpose of meeting this difficulty, under which the Governor-General,

acting in his discretion, is made the arbiter between conflicting claims of centre and provinces. This in effect preserves, in the limited sphere of the concurrent field, the existing legislative relation between centre and provinces which excited the admiration of the Statutory Commission; and we think that it would be a mistake to attempt to limit the powers of the Central Legislature in this field by any statutory definition of the purpose for which, or the conditions subject to which, they are to be used." (*Vide* Para. 233, J.P.C. Report.)

As regards conflict between central and provincial legislation on subjects included in this list the Joint Committee report thus:

"The White Paper proposes that, where there is conflict between the central and provincial legislation with respect to a subject comprised in List III, the central legislation shall prevail, unless the provincial legislation is reserved for and receives the assent of the Governor-General. This appears to us an appropriate method for effecting a reconciliation between the two points of view, and it has the further merit of avoiding the legal difficulties which any attempt further to refine the definitions in List III for the purposes of distributing the legislative power between the Central and Provincial Legislatures would of necessity create. We, therefore, approve the principle of the Concurrent List." (*Vide* Report of the Joint Committee, on Indian Constitutional Reform, Para. 53.)

PART I.

1. Criminal law, including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power.

NOTES.

Criminal law in its entire range excepting only offences against laws with respect to matters in the exclusively Federal List and those in the exclusively Provincial List is included in the Concurrent List. It was a central subject under the Devolution Rules of 1920 prior to the Government of India Act, 1935 being Item No. 30 under Part I of Schedule I. Under the Government of India Act, 1935 also the Federal Legislature continues to have power to legislate in regard to the same. The provinces also can legislate in regard to the same but subject to the

disability of repugnancy under S. 107 (1) of the Act under conditions specified therein. The Provincial Legislatures do not possess under the Act wider powers than they had under the Devolution Rules of 1920 (*vide* List 2 of Schedule 7, Items 1 and 2). It was held accordingly in *United Provinces* v. *Governor-General*, 1939 F.C. 58, that it would be competent for the Central (or Federal) Legislature after the Constitution Act of 1935 to enact a provision like S. 106 of the Cantonments Act as it was competent for it to do so under the devolution Rules of 1920 under the Government of India Act, 1919. In the Canadian Constitution all criminal law in the widest and the fullest sense is reserved to the Dominion excepting that part of it which is necessary for the purpose of enforcing whether by fine, penalty or imprisonment any of the laws validly made under the 16 clauses under which laws are to be made by the Provincial Government. *Per* Lord Herschell in *Att.-General for Ontario* v. *A.-G. for Canada*, (1896) A. C. 348=65 L.J. P. C. 26 referred to with approval in 1939 F. C. 58. It includes the power to legislate for 'the destination of fines' for any criminal offences with respect to which it was competent for a legislature to legislate. Vide *Toronto City Corporation* v. *The King*. (1932) A. C. 98=101 L.J.P.C. 33=146 L. T. 74 also referred to in 1939 F.C. 58. Under S. 91 of the British North America Act also the exclusive legislative authority of the Dominion Parliament was declared to extend to 'Criminal law except the constitution of Courts of criminal jurisdiction but including procedure in criminal matters' and under S. 92 the Provincial Legislatures are given powers to make laws for 'the administration of justice in the provinces including the constitution, maintenance and organization of Provincial Courts'. The Judicial Committee held in the above said decision that the Dominion Parliament was competent to direct the manner in which fines levied for infraction of the criminal law should be appropriated. Their Lordships explained the position thus in 1932 A.C. 98 at p. 104: ''Plainly and indeed admittedly this confers on the Dominion Parliament the exclusive right by legislation to create and define crimes and to impose penalties for their commission. In their Lordships' opinion it no less empowers the Dominion Legislature to direct how penalties for the infraction of the criminal law shall be applied. It has always been regarded as within the scope of criminal legislation for the disposal of penalties inflicted as innumerable instances show, and the power to do so is if not essential, at least incidental, to the power to legislate on criminal matters, for, it may well go to the efficacy of such legislation. If the power to direct the manner of application of penalties were to be dissociated from the power to create such penalties and were to be lodged in another authority, it is easy to see how penal legislation might be seriously affected if not stultified'.

In the *United Provinces* v. *Governor-General*, 1939 F. C. 58, it was accordingly held that any legislation passed by the Indian Legislature as regards courts of criminal jurisdiction in a province including those in cantonments would prevail over legislation in the provinces under the head of 'administration of justice' and that S. 106 of the Cantonments Act, 1924, passed by the Central Legislature for the disposal of fines in cantonment areas in the United Provinces was *intra vires* of the

powers of the Central Legislature. In the above case the Federal Court took into consideration the Government of India (Adaptation of Indian Laws) Order, 1937 and the India and Burma (Transitory Provisions) Order, 1937 in arriving at a conclusion as regards the position of affairs after the commencement of Part III of the Government of India Act on 1—4—1937. The former passed under S. 293 of the Constitution Act omitted the whole of para. (*c*) of S. 106, relating to the fines of the Cantonment Fund. His Lordship the Chief Justice of the Federal Court of India assumed without asserting that the Adaptation was made perhaps in the view that after 1—4—1937 it was considered that all fines imposed for breaches of the criminal law must be credited towards the provincial revenues. The view might or might not be a correct interpretation but the Adaptation order itself was legal and could not be challenged but according to that order the provision of S. 106 of the Cantonment Act, 1924, would be inoperative on and from 1—4—1937. But the latter order above referred to made some didfference in the consideration of the matter. The said order passed under S. 310 (1) of the Constitution Act was mainly designed to obviate unforeseen difficulties in the transition from a Unitary to a Federal type of Government. According to that order notwithstanding anything contained in the Constitution Act or in any order in Council made thereunder but subject to any provision to the contrary which might be made by an Act of the Indian, the Federal or the Provincial Legislature passed in exercise of the powers conferred on them by the Act any tax, fine or penalty required by or under the law in force immediately before the commencement of Part III of the Constitution Act, to be credited to any Local Fund or other Fund should during the next two financial years next following 1—4—1937 continue to be so credited and should not during these two years be deemed to be part of the revenue of the province. The *status quo* was preserved for two years in the absence of legislation to the contrary. (*See* observations of the Chief Justice at p. 64 in the *United Provinces* v. *Governor-General*, 1939 F. C. 58.) The effect of the Transitory Provisions Order is the postponement for two years of the coming into effect of the Adaptation Order as regards S. 106 of the Cantonments Act of 1924, *i.e.*, till 1—4—1939. After that date, however, the provisions of S. 106 would cease to have effect on account of the Adaptation order and the fines would have to be credited in the provinces. It would thus be seen that even without the 'Transitory Provisions' Order the status *quo* was confirmed by the Constitution Act until the Central Legislature and no other Legislature altered it. But it was really the Adaptation Order that changed the *status quo* on the assumption (right or wrong), it is submitted wrongly, that after the Constitution Act all fines in cantonment areas should be credited to the provinces. As the Adaptation Order itself is not open to challenge, till altered by legislation such fines would have to be credited to the provinces after 1—4—1939. The prerogative right to fines extends only to such fines as might not be appropriated by the Dominion Parliament in the exercise of its exclusive right to legislate on matters relating to criminal law. (1932) A. C. 98 at 105.

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.

3. Removal of prisoners and accused persons from one unit to another unit.

4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.

5. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.

6. Marriage and divorce; infants and minors; adoption.

7. Wills, intestacy, and succession, save as regards agricultural land.

NOTES.

These subjects are placed on the Concurrent List as a reasonable degree of uniformity and certainty is necessary throughout India in matters relating to them and both the Federal and Provincial Legislatures ought to have jurisdiction to legislate upon them. Under this head however the Federal Legislature has no jurisdiction to legislate in regard to agricultural land. *Cf.* S. 21 of the Provincial Legislative List which deals with 'transfer, alienation and devolution of agricultural land'. The exclusive jurisdiction conferred on the Provincial Legislatures to legislate on matters of devolution of agricultural land is likely to lead to conflicts between the Federal Law and the Provincial Law in regard to an important branch of law on which uniformity is necessary. Law relating to property and succession should as far as possible be uniform throughout India and these should be placed in the Federal or the Concurrent Lists for effecting such uniformity. (*Vide* observations of Sri S. Srinivasa Iyengar in his preface to Mayne's Treatise on Hindu Law and Usage, 10th Edn.)

8. Transfer of property other than agricultural land; registration of deeds and documents.

9. Trusts and Trustees.

10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contract, but not including contracts relating to agricultural land.

NOTES.

Indebtedness of an agriculturist comes under the head of contract and the Provincial Legislatures can legislate upon this subject as well as the Federal Legislature. Under S. 107 (2) of the Government of India Act a Provincial Law relating to contracts prevails over the Federal Law or the existing Indian Law if the Provincial Law is reserved for the consideration of the Governor-General or the signification of His Majesty's pleasure and has received such assent, till the Federal Legislature enacts further legislation in regard to the same matter. The validity of the Madras Agriculturists' Relief Act (IV of 1938) was supported on this ground in *Mada Nagarathnam* v. *Puvvada Seshayya*, (1939) 1 M.L. J. 272 at 299 (F.B.).

11. Arbitration.

12. Bankruptcy and insolvency; administrators-general and official trustees.

13. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

14. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List I or List II.

15. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list.

16. Legal, medical and other professions.

17. Newspapers, books and printing presses.

18. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients.

19. Poisons and dangerous drugs.

20. Mechanically propelled vehicles.

21. Boilers.

22. Prevention of cruelty to animals.

23. European vagrancy; criminal tribes.

24. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

25. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

Part II.

26. Factories.

27. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.

28. Unemployment insurance.

29. Trade unions; industrial and labour disputes.

30. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.

31. Electricity.

32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods on inland waterways.

33. The sanctioning of cinematograph films for exhibition.

34. Persons subjected to preventive detention under Federal authority.

35. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

36. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

APPENDIX K.

THE GOVERNMENT OF INDIA (ADAPTATION OF ACTS OF PARLIAMENT) ORDER, 1937.

AT THE COURT AT BUCKINGHAM PALACE.

The 18th day of March, 1937.

PRESENT:

The King's most Excellent Majesty in Council.

WHEREAS by sub-S. (5) of section three hundred and eleven of the Government of India Act, 1935 (hereafter in the recitals to this Order referred to as "the Act") it is provided that any Act of Parliament containing references to India or any part thereof, to countries other than or situate outside India or other than or situate outside British India, to His Majesty's dominions, to a British possession, to the Secretary of State in Council, to the Governor-General in Council, to a Governor in Council or to Legislatures, courts or authorities in, or to matters relating to the Government or administration of, India or British India, shall have effect subject to such adaptations and modifications as His Majesty in Council may direct, being adaptations and modifications which appear to His Majesty in Council to be necessary or expedient in consequence of the provisions of the Act or of the Government of Burma Act, 1935:

AND WHEREAS by sub-S. (2) of section one hundred and seventy-eight of the Act it is provided that all enactments relating to any such loans, guarantees and other financial obligations of the Secretary of State in Council as are referred to in sub-S. (1) of that section shall in relation to those loans, guarantees and obligations continue to have effect with certain substitutions and with such other modifications and such adaptations as His Majesty in Council may deem necessary:

AND WHEREAS under section three hundred and twenty of the Act His Majesty by Order in Council has appointed the first day of April, nineteen hundred and thirty-seven, as the date on which the provisions of the Act, other than the provisions of Part II thereof, are, subject to any exceptions mentioned in the Order, to come into force:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of sub-S. (1) of section three hundred and nine of the Act and an address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "THE GOVERNMENT OF INDIA (ADAPTATION OF ACTS OF PARLIAMENT) ORDER", 1937, and shall come into operation on the first day of April, nineteen hundred and thirty-seven.

2. The Acts of Parliament referred to in the Schedule to this Order shall have effect subject to the adaptations and modifications specified in the said Schedule.

3. In any Act of Parliament passed before the commencement of this Order and not referred to in the Schedule thereto references to the revenues of India shall be construed, in relation to the period after the establishment of the Federation of India, as references to the revenues of the Federation and, in relation to the period between the commencement of Part III of the Government of India Act, 1935, and the establishment of the Federation, as references to the revenues of the Governor-General in Council.

4. The provisions of this Order which adapt or modify any Act by transferring functions to another authority shall not render invalid any order, bye-law, rule, or regulation duly made, or anything duly done, before the commencement of this Order and any such order, bye-law, rule, regulation or thing may be revoked, varied or undone in like manner, to the like extent and in the like circumstances as orders, bye-laws, rules, regulations or things made or done by the authority to which the functions are transferred.

5. Nothing in the Aden Colony Order, 1936, shall be construed as requiring that references in Acts of Parliament to India or British India shall continue to be construed as including references to Aden.

M. P. A. Hankey.

THE SCHEDULE.

PART I.

The Interpretation Act, 1889.

(52 & 53 Vict. c. 63.)

In section eighteen, the definitions of "British India" and "India" shall be omitted; and in the definition of "Governor" the words "and India" shall be omitted and after the words "any other British possession" there shall be inserted the words "outside British India."

After section eighteen there shall be inserted the following section:—

Special definitions relating to India.

"18-A.—(1) In this Act and in every other Act, whether passed before or after the commencement of this Act,—

(i) the expression "British possession", when used in relation to British territories in India, shall, unless the contrary intention appears, mean British India as a whole, and references, in whatever words, to territories of the Crown abroad shall as respects India be construed accordingly;

(ii) the expression "Governor" shall, when used in relation to British India as a whole or to India as a whole, mean the Governor-General;

(iii) the expression "Governor-General" shall, when used in relation to British India or to India,—

(*a*) in relation to the period between the commencement of Part III of the Government of India Act, 1935, and the establishment of the Federation of India, mean the Governor-General in Council;

(*b*) in relation to any period after the commencement of the said Part III, be construed as including a reference to the Governor of a Province in India acting within the scope of any authority given to him under Part VI of the said Act;

(iv) the expression "Indian legislature" and, when used in relation to British India or to India, the expression "legislature" shall mean the authority, other than the Imperial Parliament, competent to make laws for British India, or for the relevant part of British India.

(2) This section applies for the interpretation of the Government of India (Adaptation of Acts of Parliament) Order, 1937, but it does not apply for the interpretation of the Government of India Act, 1935, or the Government of Burma Act, 1935, nor, save as aforesaid, for the interpretation of any Order in Council made under either of those Acts, notwithstanding that that Order may provide generally that this Act shall apply for the interpretation thereof as it applies for the interpretation of an Act of Parliament.

PART II.

General enactments.

The Criminal Law (India) Act, 1828.

(9 Geo. 4, c. 74.)

In sections one, seven and eight, references (in whatever words) to the British territories under the Government of the East India Company shall be construed as references to British India, British Burma, Aden and the Straits Settlements.

The Slave Trade Act, 1843.

(6 & 7 Vict. c. 98.)

At the end of section four there shall be inserted the following sub-section:—

"(2) In the case of British India, any such writ as aforesaid may be addressed to the chief justice, or other chief judge, of any court which is a High Court for the purposes of the Government of India Act, 1935."

The Chinese Passengers Act, 1855.

(18 & 19 Vict. c. 104.)

In section one, the words "not being under the Government of the East India Company", and in sections eight and ten the words "or in the territories of the East India Company", shall be omitted.

The Evidence by Commission Act, 1859.

(22 Vict. c. 20.)

At the end of section five there shall be inserted the following sub-section:—

"(2) For the purposes of this Act the expression 'Supreme Court' means, as respects India, a court which is a High Court for the purposes of the Government of India Act, 1935, and, as respects Burma, the High Court at Rangoon."

The Indian Securities Act, 1860.

(23 & 24 Vict. c. 5.)

In section one for the words "by the Secretary of State in Council" there shall be substituted the words "by the Governor-General".

The Admiralty Jurisdiction (India) Act, 1860.

(23 & 24 Vict. c. 88.)

For section one there shall be substituted the following section:—

Application of principal Act to British India and British Burma.

"1. The Admiralty Offences (Colonial) Act, 1849, shall apply to British India and British Burma as it applies to colonies."

The Colonial Laws Validity Act, 1865.

(28 & 29 Vict. c. 63.)

In section one, for the words "and such territories as may for the time being be vested in Her Majesty under or by virtue of any Act of Parliament for the Government of India" there shall be substituted the words "British India and British Burma".

The Documentary Evidence Act, 1868.

(31 & 32 Vict. c. 37.)

In section five, in the definition of "British colony and possession" the words from "and such" to "India" shall be omitted, and at the end of the section there shall be inserted the following sub-section:—

"(2) For the purposes of this Act, British India as a whole and also each Governor's Province and Chief Commissioner's Province thereof shall be regarded as separate British possessions."

The Colonial Prisoners Removal Act, 1869.

(32 & 33 Vict. c. 10.)

In section two, for the words "such territories as may for the time being be vested in Her Majesty by virtue of any Act of Parliament for the Government of India" there shall be substituted the words "British India or British Burma."

The Extradition Act, 1870.

(33 & 34 Vict. c. 52.)

In section twenty-three, after the words "of India" there shall be inserted the words "or, as the case many be, of the Governor of Burma"; the words "in Councils shall be omitted and after the words "British India" there shall be inserted the words "or with Burma."

In section twenty-six, in the definition of "Governor" the words "and includes the Governor of any part of India" shall be omitted.

The Foreign Enlistment Act, 1870.

(33 & 34 Vict. c. 90.)

In section thirty, in the definition of "The Governor" the words "or the Governor of any presidency" shall be omitted, and for the words "and where a British possession consists," there shall be substituted the words "and as respects a British possession which consists."

The Slave Trade Act, 1873.

(36 & 37 Vict. c. 88.)

In section two, at the end of the definition of "Governor" there shall be inserted the following words:—

"Provided that as respects British India it means the Governor-General."

The Courts (Colonial) Jurisdiction Act, 1874.

(37 & 38 Vict. c. 27.)

In section two, for the words from "or the Channel Islands" to "India and" there shall be substituted the words "the Channel Islands, British India or British Burma, but shall include", and at the end of that section there shall be inserted the following section:—

Application of Act to British India and British Burma.

2-A. This Act applies in relation to each Governor's Province and Chief Commissioner's Province of British India and to British Burma as it applies in relation to a colony."

The Slave Trade Act, 1876.

(39 & 40 Vict. c. 46.)

In section two, for the words "If the Governor-General of India in Council shall at a meeting for making laws and regulations amend" there shall be substituted the words, "If the Legislature of India shall amend"; and for the words "the Secretary of State for India" there shall be substituted the words "the Secretary of State."

In section three, for the words "S. 330 of Act 10 of 1872 passed by the Governor-General of India in Council and" there shall be substituted the words "Chapter XL of the Indian Act V of 1898"; for the words "the Governor-General of India in Council or any Indian Government" there shall

be substituted the words "His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States or of the Governor-General"; and for the words "Her Majesty's Indian dominions" there shall be substituted the words "British India, British Burma or Aden."

After section three there shall be inserted the following sections:—

Application of Act to Burma.

"3-A. (1) The provisions of this Act shall apply to Burma subject to the modifications specified in this section.

(2) In section one, for the words "of any Prince or State in India in alliance with Her Majesty" there shall be substituted the words "a native of any part of Burma not forming part of British Burma"; and for the words "British India" there shall be substituted the words "British Burma."

(3) In section two, for the words "the Legislature of India" there shall be substituted the words "the Burma Legislature."

(4) In section three, for the words "every High Court in India" there shall be substituted the words "the High Court at Rangoon"; for the words "And every High Court" there shall be substituted the words "And the High Court"; for the words from "agent of" to the words "alliance with Her Majesty" there shall be substituted the words "agent of the Governor in the said parts''; and for the words "jurisdiction in India'' there shall be substituted the words ''jurisdiction in Burma.''

(5) For any reference to the Indian Penal Code and for the reference to Chapter XL of the Code of Criminal Procedure there shall be substituted a reference to the Code or Chapter in question as adapted or modified under the Government of Burma Act, 1935, and in force as part of the law of Burma immediately after the commencement of that Act:

Provided that, if the Code of Criminal Procedure is repealed and re-enacted in Burma, either with or without modifications, the reference to the said Chapter XL shall be construed as a reference to the corresponding provisions of the re-enacted Code as for the time being in force in Burma.

Application of Act to Aden.

3-B. (1) The provisions of this Act shall apply to Aden subject to the modifications specified in this section.

(2) In section one, the words "or of any Prince or State in India in alliance with Her Majesty" shall be omitted and for the words "British India" there shall be substituted the word "Aden."

(3) In section two, for the words "the Legislature of India" there shall be substituted the words "any authority competent to make laws for Aden"; after the word "unless", where it first occurs, there shall be inserted the words "(in the case of a law not made by Order in Council)", and for the words "amending Act" there shall be substituted the words "amending law."

(4) In section three, for the words "every High Court in India", there shall be substituted the words "the Supreme Court of Aden"; for the words "And every High Court" there shall be substituted the words "And the Supreme Court"; for the words from "agent of" to the words "alliance with Her Majesty" there shall be substituted the words "agent of the Governor in the said parts'', and for the words ''jurisdiction in India'' there shall be substituted the words "jurisdiction in or for Aden."

(5) Any reference to the Indian Penal Code shall be construed as a reference to that Code as in force in Aden immediately after the commence-

ment of the Aden Colony Order, 1936, and the reference to Chapter XL of the Code of Criminal Procedure shall be construed as a reference to that Chapter as for the time being in force in Aden, or, if the said Code is repealed and re-enacted in Aden, either with or without modifications, as a reference to the corresponding provisions of the re-enacted Code as for the time being in force in Aden.

Section five shall be omitted.

The Colonial Fortifications Act, 1877.
(40 & 41 Vict. c. 23.)

In section three, for the words "India as defined for the purposes of the Acts for the time being in force relating to the Government of India" there shall be substituted the words "British India or British Burma."

The Colonial Stock Act, 1877.
(40 & 41 Vict. c. 59.)

In section twenty-six, for the words "India as defined for the purposes of the Acts for the time being in force relating to the Government of India" there shall be substituted the words "British India or British Burma."

The Territorial Waters Jurisdiction Act, 1878.
(41 & 42 Vict. c. 73.)

In section seven, in the definition of "Governor" the words "or the Governor of any presidency" shall be omitted, and for the words "and where a British possession" there shall be substituted the words "and as respects a British possession which."

The Fugitive Offenders Act, 1881.
(44 & 45 Vict. c. 69.)

In section thirty-nine in the definition of "Governor" the words "and includes the Governor and Lieutenant-Governor of any part of India" shall be omitted.

The Colonial Prisoners Removal Act, 1884.
(47 & 48 Vict. c. 31.)

After section fourteen there shall be inserted the following sections:—

Application of Act to British India.

"14-A. (1) This Act in its application to British India shall have effect subject to the modifications specified in this section.

(2) In relation to persons removed or to be removed, or returned or to be returned, from or to British India to or from any part of His Majesty's dominions outside British India, British India shall be deemed to be one British possession and, in relation to that possession, any reference to the Government, to the Governor or to the Governor in Council and any reference to the Legislature shall be construed as a reference to the Governor-General or, as the case may be, to the Indian or Federal Legislature.

(3) In relation to persons removed or to be removed, or returned or to be returned, from or to one Province in British India to or from another Province in British India, each Province shall be deemed to be a separate British possession; any reference to the Government or to the Governor in Council and any reference to the Legislature shall, in relation to a Governor's Province, be construed as a reference to the Governor or, as the case may be, to the Provincial Legislature; and any reference to the Government, the Governor or the Governor in Council and any reference to the Legislature

shall, in relation to a Chief Commissioner's Province, be construed as a reference to the Governor-General or, as the case may be, to the Indian or Federal Legislature.

Application of Act to British Burma.

14-B. In the application of this Act to British Burma references to the Governor in Council shall be construed as references to the Governor."

In section eighteen—

(*a*) after the words "unless the context otherwise requires" there shall be inserted the words "and subject, as respects India, to the provisions of section fourteen A of this Act."

(*b*) in the definition of "British possession", the words "and any part of India under a Governor or Lieutenant-Governor shall be deemed to be one British possession" shall be omitted;

(*c*) the definition of "India" shall be omitted;

(*d*) in the definition of "legislature", the words "and in every part of India means the Governor-General in Council" shall be omitted; and

(*e*) in the definition of "Governor", the words "and includes the Governor-General of India and also the Governor and Lieutenant-Governor of any part of India" shall be omitted.

The Evidence by Commission Act, 1885.

(48 & 49 Vict. c. 74.)

In sections two and three, after the word "India" there shall be inserted the word "Burma."

The Colonial Courts of Admiralty Act, 1890.

(53 & 54 Vict. c. 27.)

At the end of section four there shall be inserted the following paragraph:—

"This section shall not apply to Indian laws or Burma laws."

In proviso (*a*) to sub-S. (2) of section nine, for the words "or in any British possession" there shall be substituted the words "or in Burma or in any other British possession."

The Foreign Jurisdiction Act, 1890.

(53 & 54 Vict. c. 37.)

At the end of section fifteen there shall be inserted the words "and natives of any part of Burma which is not part of British Burma."

The Superannuation Act, 1892.

(55 & 56 Vict. c. 40.)

In sub-S. (3) of section one, after the words "revenue of India" there shall be inserted the words "or of Burma" and the words "in Council of India" shall be omitted.

In paragraph (*c*) of section four, after the words "of India" there shall be inserted the words "or of Burma", and at the end of the section there shall be inserted the following sub-section:—

"(2) In this Act references to the revenue of India include references to the revenues of the Federation (and, before the establishment of the Federation, the revenues of the Governor-General in Council) and to the revenues of any Province in India."

The Regimental Debts Act, 1893.
(56 & 57 Vict. c. 5.)

In section sixteen, after the word "India" there shall be inserted the words "or Burma."

In section twenty-five, for the words "as if it were a colony" there shall be substituted the words "and to Burma as if they were colonies"; and at the end of the section there shall be added the words "or to any native of Burma within the meaning of Burma military law."

In section twenty-six, after the word "India" where it first occurs there shall be inserted the words "or Burma"; after the words "of the Commander-in-Chief in India" there shall be inserted the words "or of the general officer commanding the forces in Burma"; the words "or of any provincial Commander-in-Chief in India" shall be omitted and for the words "The Secretary to the Government of India in the Military Department" there shall be substituted the words "The Governor-General of India or, as the case may be, the Governor of Burma."

In section twenty-seven, for the words "the Indian military and orphan funds, or either of them" there shall be substituted the words "any officially recognised pension or provident fund."

Section twenty-eight shall be omitted.

In section twenty-nine, in the definition of "representation" after the word "India" in both places where it occurs there shall be inserted the word "Burma", and in the definition of "official administrator" the words "presidency or" shall be omitted, and after the word "province" there shall be inserted the words "and in Burma the Administrator-General of Burma."

The Trustee Act, 1893.
(56 & 57 Vict. c. 53.)

Until the Parliament of Northern Ireland makes other provision in that behalf, this Act shall, in its application to Northern Ireland, have effect as if:—

(*a*) at the end of paragraph (*d*) of section one there were inserted the words "or in any sterling loans raised by the Secretary of State on behalf of the Governor-General of India in Council under the provisions of Part XIII of the Government of India Act, 1935"; and

(*b*) at the end of the said section there were inserted the words "(2) The dissolution of the Council of India shall not remove from the operation of this section any securities which were within the operation thereof immediately before the dissolution of that Council."

The Merchant Shipping Act, 1894.
(57 & 58 Vict. c. 60.)

In section ninety-nine, for the words "Indian Marine Service", in both places where they occur, there shall be substituted the words "Indian Navy."

In section one hundred and twenty-five, in sub-S. (1), after the words "of India" there shall be inserted the words "or Burma", and after the words "British India" there shall be inserted the words "or British Burma", in sub-S. (2), for the words from "as the Governor-General" to the end of the sub-section there shall be substituted the words "as the

Governor-General of India or the Governor of Burma, according as the agreement is made in India or Burma, may direct"; in sub-S. (3) the words "in Council of India", wherever they occur, shall be omitted, and in sub-S. (4) after the word "India", wherever it occurs, there shall be inserted the words "or Burma."

In section one hundred and eighty-five, the words "in Council of India" wherever they occur, shall be omitted; in sub-S. (1), after the words "natives of India" there shall be inserted the words "or Burma"; in sub-S. (2), after the words "The part of India" there shall be inserted the words "or of Burma"; in sub-S. (3), the words "out of the revenues of India" shall be omitted, and at the end of the sub-section there shall be inserted the words "but, so far as not recovered from the owner or master shall be a liability to be met out of the revenues of India or, as the case may be, of Burma", and in sub-S. (4) after the word "India" there shall be inserted the words "or Burma."

In section two hundred and seventy, after the words "British India" there shall be inserted the words "British Burma."

In sub-S. (2) of section three hundred and sixty-eight, for the words "Governor-General of India in Council" there shall be substituted the words "legislature of India."

After section three hundred and sixty-eight there shall be inserted the following section:—

Power for Legislature of Burma to apply Part III.

"368-A. (1) The provisions of the past preceding section shall apply in relation to British Burma as they apply in relation to British India with the substitution of references to British Burma for references to British India or India and of a reference to Burma law for the reference to Indian law.

(2) Any Act of the Indian Legislature which, as adapted or modified under the Government of Burma Act, 1935, is in force immediately after the commencement of that Act as part of the law of Burma shall, for the purposes of this section, be deemed to be an Act of the Legislature of Burma."

The Appellate Jurisdiction Act, 1908.

(8 Edw. 7, c. 51.)

In sub-S. (1) of section two, for the words "any High Court in British India" there shall be substituted the words "the Federal Court in India, a High Court in British India or the High Court at Rangoon", and for sub-S. (3) of that section there shall be substituted the following sub-section:—

"(3) In this section the expression 'High Court in British India' means a court which is a High Court for the purposes of the Government of India Act, 1935, and, as respects any period before the commencement of Part III of that Act, a court which was, or was recognised by Order in Council as being, a High Court in British India for the purposes of this section."

In the Schedule, after the words "British India" there shall be inserted the words "British Burma."

The Pensions (Governors of Dominions, etc.) Act, 1911.

(1 & 2 Geo. 5, c. 24.)

In sub-S. (1) of section twelve, after the words "of British India" there shall be inserted the words "and of British Burma."

The British Nationality and Status of Aliens Act, 1914.

(4 & 5 Geo. 5, c. 17.)

In sub-S. (1) of section eight, after the words "British India" there shall be inserted the words "British Burma."

The Prize Courts Act, 1915.

(5 & 6 Geo. 5, c. 57.)

In section four, for the words "as respects any prize court in India except on the application of the Governor-General of India in Council" there shall be substituted the words "as respects any prize court in India, except on the application of the Governor of the Province in which the court has its principal seat or, as respects any prize court in Burma, except on the application of the Governor of Burma."

The Official Secrets Act, 1920.

(10 & 11 Geo. 5, c. 75.)

In proviso (a) to sub-S. (1) of section eleven, for the words "and India", there shall be substituted the words "India and Burma."

The Trusts (Scotland) Act, 1921.

(11 & 12 Geo. 5, c. 58.)

At the end of section ten there shall be inserted the following sub-section:—

"(2) In this section the expression 'the Indian Government' means the Secretary of State in Council of India, but the dissolution of the Council of India shall not remove from the operation of this section any stock, debentures, bonds or mortgages which were within the operation thereof immediately before the dissolution of that Council."

The Treaties of Washington Act, 1922.

(12 & 13 Geo. 5, c. 21.)

In sub-S. (1) of section five, after the word "India" there shall be inserted the word "Burma."

The Finance Act, 1923.

(13 & 14 Geo. 5, c. 14.)

In section nineteen, in sub-S. (2), after the words "British India" there shall be inserted the words "or British Burma", and in sub-S. (4) for the words "British India or for" there shall be substituted the words "India, Burma or."

The Trustee Act, 1925.

(15 & 16 Geo. 5, c. 19.)

At the end of section one, there shall be inserted the following sub-section:—

"(3) The dissolution of the Council of India shall not remove from the operation of this section any debenture stock or other stock which was within the operation thereof immediately before the dissolution of that Council."

The Merchant Shipping (International Labour Conventions) Act, 1925.

(15 & 16 Geo. 5, c. 42.)

At the end of section five there shall be inserted the following sub-section:—

"(2) Notwithstanding the separation of India and Burma this Act shall continue to have effect as if Burma were still part of India."

Indian and Colonial Divorce Jurisdiction Act, 1926.

(16 & 17 Geo. 5, c. 40.)

In sub-S. (1) of section one, for the words "a High Court in India to which Part IX of the Government of India Act applies" there shall be substituted the words "a High Court in British India constituted by His Majesty by Letters Patent"; and for the words "where a court in India" there shall be substituted the words "where a court in British India."

In sub-S. (4) of section one, the words "in Council of India" shall be omitted.

In sub-S. (5) of section one, for the words "and India" there shall be substituted the words "India and Burma."

At the end of section one, there shall be inserted the following sections:—

Divorce Jurisdiction of High Court in Burma where parties are domiciled in England or Scotland.

"1-A.—The provisions of section one of this Act shall apply in relation to Burma as they apply in relation to India, subject to the following modifications, that is to say—

(*a*) in sub-S. (1) of the said section, for the words "a High Court in British India constituted by His Majesty by Letters Patent" there shall be substituted the words "the High Court at Rangoon", and for the words "where a court in British India" there shall be substituted the words "where the court";

(*b*) in the provisos to the said sub-section, for the words "any such court", wherever those words occur, there shall be substituted the words "the court"; and for the words "no such court shall" there shall be substituted the words "the court shall not";

(*c*) in sub-S. (3) of the said section, for the words "the High Court in India by which the decree or order is made" there shall be substituted the words "the High Court at Rangoon" and for the words "by the High Court in India" there shall be substituted the words "by the High Court at Rangoon";

(*d*) in sub-S. (4) of the said section, for the words "a High Court in India" there shall be substituted the words "the High Court at Rangoon" and in paragraph (*g*) for the words "each High Court" there shall be substituted the words "the High Court";

(*e*) in sub-S. (5) of the said section, for the words "a High Court in India" there shall be substituted the words "the High Court at Rangoon";

(*f*) save as aforesaid, for the word "India" wherever it occurs in the said section (except in the phrase "India and Burma") there shall be substituted the word "Burma."

Saving for pending proceedings, rules, etc.

1-B—(1) Any proceedings commenced under this Act before the separation of Burma from India may be continued, determined and appealed against in all respects as if Burma had continued to be part of India.

(2) The rules made under sub-S. (4) of section one of this Act which immediately before the separation of Burma from India were applicable to the High Court at Rangoon shall, until superseded by fresh rules, continue to apply to that court, and nominations made and approved under those rules shall continue to have effect."

In section two, for the words "the foregoing provisions of this Act" there shall be substituted the words "the provisions of section one of this Act."

In section three, after the words "in India" there shall be inserted the words "(including Burma and Aden)".

Indian Church Act, 1927.

(17 & 18 Geo. 5, c. 40.)

In section one, in the definition of "chaplain" for the words from "is appointed" to "a like chaplaincy" there shall be substituted the words—

"(i) is a chaplain to whom the provisions of section two hundred and sixty-nine of the Government of India Act, 1935, or the provisions of section one hundred and twenty-two of the Government of Burma Act, 1935, apply; or

(ii) is in the permanent service of the Crown and has been or is accepted by the Secretary of State in Council of India, or by the Secretary of State, as holding for the purposes of this Act a chaplaincy in India, Burma or Aden."

At the end of the said section there shall be inserted the following words and sub-section:—

"Any reference in this Act to the revenues of the Federation of India shall, as respects the period before the establishment of the Federation, be construed as a reference to the revenues of the Governor-General in Council.

Any reference in this Act to, or to any provisions of, an Indian Act shall be construed as a reference to that Act as for the time being in force in India, and, as respects any period after the separation of Burma and Aden from India, as including references to that Act or those provisions as for the time being in force in Burma and as for the time being in force in Aden, and, if any such Act or provisions have, whether in India, Burma or Aden, been repealed and re-enacted either with or without modifications, any reference thereto in this Act shall be construed as a reference to the re-enacted Act or provisions as in force in the country in question.

(2) Nothing in the Government of India Act, 1935, shall be construed as affecting the unity of the Indian Church as defined in this section or as excluding Burma or Aden from the operation of this Act."

In section three, after the words "church or burial ground" in the first two places where those words occur there shall be inserted the words "in India, Burma or Aden."

In section four, in sub-S. (1), the words "in Council", in both places where those words occur, shall be omitted, and after the words "whether

consecrated or not" there shall be inserted the words "which are situate in India."

After the said sub-S. (1) there shall be inserted the following sub-section:—

"(1-A) If such a certificate as aforesaid is sent to the Governor-General of India he shall also forward a certified copy thereof to the Governor of Burma who shall cause it to be published in the official Gazette of Burma and thereupon shall be at liberty to resume complete control of all or any Maintained Churches or burial grounds, whether consecrated or not, which are situate in Burma, and the Indian Church and the officials and members thereof respectively shall cease to have any rights therein."

In sub-S. (2), at the end of paragraph (*i*), there shall be inserted the words "or, as the case may be, of the Government of Burma."

In sub-S. (3), for the words "the Governor-General of India in Council" there shall be substituted the words "Governor-General of India or, as the case may be, the Governor of Burma"; and at the end of the sub-section there shall be inserted the following sub-section:—

"(3-A) The provisions of sub-Ss. (1-A), (2) and (3) of this section shall apply in relation to Aden as they apply in relation to Burma, with the substitution of the word 'Aden' for the word 'Burma' wherever that word occurs."

In section five, for the words from "The Governor-General" to "Council of India" there shall be substituted the words "The Governor-General of India as respects India, the Governor of Burma as respects Burma, and the Governor of Aden as respects Aden, in each case with the sanction of the Secretary of State."

In paragraph (ii) of the said section for the word "the revenues of India" there shall be substituted the words "the revenues of the Federation of India, the revenues of Burma or the revenues of Aden, as the case may be."

In paragraph (x) of the said section for the words "the Governor-General of India in Council" there shall be substituted the words "Governor-General of India, the Governor of Burma, or the Governor of Aden."

At the end of the said section there shall be inserted the following sub-section:—

"(2) Any rules made under this section which immediately before the separation of Burma and Aden from India were applicable to Burma or Aden shall, until superseded by other rules, continue to apply with any necessary modifications to Burma or Aden, as the case may be."

In section eight, at the end of sub-S. (2), there shall be inserted the following sub-section:—

"(2-A) Notwithstanding anything in section one of this Act, section ninety-two of the Code of Civil Procedure as for the time being in force in India shall, for the purposes of this section, be deemed to be in force in Aden as part of the law of Aden, whether it is there in force for other purposes or not, and any appeal under this section from the decision of a court in Aden shall lie to, and be entertained by, the High Court at Bombay."

Sub-S. (3) of the said section shall be omitted.

In section nine, in paragraph (i) for the words "the Secretary of State in Council of India" in both places in which they occur there shall be substituted the words "any competent authority"; in paragraphs (iii) and (iv) after "continuance" there shall be inserted the words "by the competent authority"; and in paragraph (iv) after the words "minister in India" there shall be inserted the words "Burma or Aden."

Throughout the section for the words "the revenues of India" there shall be substituted the words "public revenues of India, Burma or Aden."

The Easter Act, 1928.

(18 & 19 Geo. 5, c. 35.)

In part I of the Schedule, after the words, "British India" there shall be inserted the words "British Burma."

The Appellate Jurisdiction Act, 1929.

(19 & 20 Geo. 5, c. 8.)

For sub-S. (2) of section one there shall be substituted the following sub-section:—

"(2) A person shall be qualified under this section if he is a Privy Councillor, and

(*a*) is or has been a judge of the Federal Court in India, a High Court in British India or the High Court at Rangoon; or

(*b*) is a barrister, advocate or pleader of not less than fourteen years standing who practises, or has practised, in British India or British Burma.

In this sub-section the expression 'High Court in British India' means a court which is a High Court for the purposes of the Government of India Act, 1935, and, as respects any period before the commencement of Part III of that Act, a court which was a High Court within the meaning of clause (24) of section three of an Act of the Indian Legislature known as the General Clauses Act, 1897."

In sub-S. (5), for the words "the revenues of India" there shall be substituted the words "the revenues of the Federation of India, the revenues of the Governor-General of India in Council or the revenues of Burma, as the case may be."

The Companies Act, 1929.

(19 & 20 Geo. 5, c. 23.)

In paragraph (*h*) of sub-S. (1) of section fifty-four, for the words "as amended by" there shall be substituted the words "as amended or adapted by or under".

The Import Duties Act, 1932.

(22 & 23 Geo. 5, c. 8.)

At the end of sub-S. (1) of section four there shall be inserted the following words:—

"This section shall apply also to Burma as respects goods imported after the thirty-first day of March, nineteen hundred and thirty-eight."

In sub-S. (1) of section twenty-one, in the definition of "the British Empire" after the word "India" there shall be inserted the words "and Burma."

The Isle of Man (Customs) Act, 1932.

(22 & 23 Geo. 5, c. 16.)

At the end of sub-S. (1) of section two there shall be inserted the following words:—

"This section shall apply also to Burma as respects goods imported after the thirty-first day of March, nineteen hundred and thirty-eight.

In paragraph (*b*) of section eleven, after the word "India" there shall be inserted the words "and Burma."

The Finance Act, 1933.

(23 & 24 Geo. 5, c. 19.)

At the end of paragraph (*a*) of sub-S. (1) of section fifteen there shall be inserted the words "(as adapted by any Order in Council made under the Government of India Act, 1935)."

In paragraph 2 (*d*) of Schedule V, after the word "India" there shall be inserted the word "Burma."

The Isle of Man (Customs) Act, 1933.

(22 & 24 Geo. 5, c. 40.)

At the end of paragraph (*a*) of section eleven and at the end of paragraph (*b*) of sub-S. (2) of section twenty-one there shall be inserted the words "(as adapted by any Order in Council made under the Government of India Act, 1935)."

In paragraph 2 (*d*) of Schedule IV, after the word "India" there shall be inserted the word "Burma".

The Whaling Industry (Regulation) Act, 1934.

(24 & 25 Geo. 5, c. 49.)

In sub-S. (1) of section fifteen, the words "or by the Indian Legislature" and the words "or, as the case may be, in British India" shall be omitted, and in sub-S. (1) of section seventeen, after the word "India" there shall be inserted the words "or Burma."

The Unemployment Insurance Act, 1935.

(25 & 26 Geo. 5, c. 8.)

In paragraph (d) of sub-S. (10) of section ninety-six, after the words "Indian forces" there shall be inserted the words "Burma forces."

The National Health Insurance Act, 1936.

(26 Geo. 5 & 1 Edw. 8, c. 32.)

In sub-S. (1) of section one hundred and twenty-nine, after the words "Indian Forces" there shall be inserted the words "of His Majesty's Burma Forces."

PART III.

The Army and Air Force Acts.

(a) *Adaptations of the Army Act and also of the Air Force Act.*

In section thirteen,—in paragraph (*a*) of sub-S. (1) after the word "India" there shall be inserted the word "Burma."

In section fifty-four,—in sub-S. (8), after the word "India" there shall be inserted the words "or Burma", and at the end of the sub-section there shall be added the words "or, as the case may be, by the Governor of Burma"; and in sub-S. (9) after the words "the Governor-General" there shall be inserted the words "or, if he has been tried in Burma, by the Governor of Burma."

In section fifty-nine, after the word "India", in both places where it occurs, there shall be inserted the word "Burma."

In section sixty, after the word "India", in both places where it occurs, there shall be inserted the words "or Burma."

In section sixty-four,—in sub-S. (4) after the word "India", in the first three places where it occurs, there shall be inserted the word "Burma", and after the words "Governor-General of India" there shall be inserted the words "the Governor of a Province in India, the Governor of Burma."

In section sixty-eight,—in paragraphs (*f*), (*g*) and (*h*) of sub-S. (2) after the word "India" wherever it occurs, there shall be inserted the word "Burma."

In section ninety-four, after the word "India" where it first occurs, there shall be inserted the word "Burma", and after the words "in the Dominion; and" there shall be inserted the words "In Burma, any person duly authorised in that behalf by the Governor of Burma; and".

In section one hundred and twenty-two,—in sub-S. (6) after the words "the Governor-General of India" there shall be inserted the words "the Governor of Burma."

In section one hundred and twenty-seven, the words "to the provisions of the Indian Evidence Act, 1872 or" shall be omitted, and after the word "legislature" there shall be inserted the words "or authority."

In section one hundred and thirty,—in sub-S. (5) for the words "presidency in which the person is confined" there shall be substituted the words "Province in which the person is confined and, in the case of a person confined in Burma, the Governor of Burma", and after the words "the United Kingdom, India", in both places where those words occur, there shall be inserted the word "Burma."

In section one hundred and thirty-two, after the words "in India for the Governor-General" in both places where those words occur, there shall be inserted the words "and in Burma for the Governor"; for "the words the Secretary of State or Governor-General" there shall be substituted the words "the Secretary of State, Governor-General or Governor," and for the words "The Secretary of State and Governor-General shall by rule" there shall be substituted the words "The Secretary of State, the Governor-General and the Governor of Burma shall by rules".

In section one hundred and thirty-four, after the word "India" in both places where that word occurs, there shall be inserted the words "or Burma."

In section one hundred and thirty-five, after the words "with the Governor-General of India" there shall be inserted the words "the Governor of any Province in India, the Governor of Burma"; for the words "or in such colony," there shall be substituted the words "Burma or that colony"; and after the words "from the Governor-General of India" there shall be inserted the words "the Governor of the Province, the Governor of Burma."

In section one hundred and thirty-six, for the words "passed by the Governor-General of India in Council" there shall be substituted the words "for the time being in force in India or Burma, being in the case of India a law of the Indian legislature."

In section one hundred and thirty-seven,—in paragraph (4) after the words "the Governor-General" there shall be inserted the words "or, in the case of officers serving in Burma, the Governor"; after the words "an officer serving in India" there shall be inserted the words "or Burma", and for the words "in Council" there shall be substituted the words "or, as the case may be, for Burma."

In section one hundred and forty-three,—in sub-S. (1) for the words "the legislature or other authority in India or any colony, there shall be substituted the words "any legislature or other authority in India, Burma or a colony."

In section one hundred and fifty-four,—in paragraph (5) after the word "India" there shall be inserted the words "or Burma", and in paragraph (7) after the word "India" there shall be inserted the word "Burma."

In section one hundred and fifty-six,—in sub-S. (8) after the words "the Governor-General of India" there shall be inserted the words "or the Governor of Burma"; for the words "by any law or Ordinance to reduce" there shall be substituted the words "to provide for reducing"; and after the words "such Governor-General" there shall be inserted the word "Governor."

In section one hundred and sixty-two,—in sub-S. (3) for the words "supreme court in India" there shall be substituted the words "High Court in India or Burma."

In section one hundred and sixty-three,—in paragraph (d) of sub-S. (1) after the words "Governor-General of India" there shall be inserted the words "and, if in Burma, by some office under the Governor of Burma"; and in sub-S. (2), after the word "India" there shall be inserted the words "or Burma."

In section one hundred sixty-eight, after the word "India" there shall be inserted the word "Burma."

In section one hundred and sixty-nine, after the words "the Governor-General of India" there shall be inserted the words "and the Governor of Burma"; the words "by law" shall be omitted, and after the words "appear to the Governor-General" there shall be inserted the word "Governor."

In section one hundred and seventy,—in sub-S. (3) for the words "supreme court in India" there shall be substituted the words "High Court in India or Burma" and after the words "such Indian" there shall be inserted the word "Burma."

In section one hundred and seventy-five,—in paragraph (4) for the words "and of India" there shall be substituted the words "India and Burma";

in paragraph (7) after the words "Governor-General of India" there shall be inserted the words "or of the Governor of Burma"; and

in paragraph (12) after the word "India" in both places where it occurs, there shall be inserted the word "Burma."

In section one hundred and seventy-six,—in paragraph (3) for the words "and of India" there shall be substituted the words "India and Burma"; and

in paragraph (11) after the word "India" in both places where it occurs, there shall be inserted the word "Burma."

In section one hundred and seventy-seven, for the words "in India or in a colony" there shall be substituted the words "in India, Burma or a colony", and after the words "of India" wherever those words occur, there shall be inserted the word "Burma."

In section one hundered and eighty,—in sub-S. (1) after the word "India" wherever it occurs, there shall be inserted the words "or Burma", and in sub-S. (3) after the word "India" there shall be inserted the words "or Burma."

In section one hundred and eighty-one,—in sub-S. (1) after the word "India" there shall be inserted the word "Burma."

In section one hundred and ninety,—for paragraph (21) the following paragraphs shall be substituted:—

"(21) The expression 'British India' means all territories for the time being comprised within the Governors' Provinces and the Chief Commissioners' Provinces, and the expression 'India' means British India together with all territories of any Indian Ruler under the suzerainty of His Majesty, all territories under the suzerainty of any such an Indian Ruler, the tribal areas and any other territories which His Majesty in Council may from time to time after ascertaining the views of the Federal Government and the Federal Legislature, declare to be part of India.

(21-A) The expression 'Burma' includes (subject to the exercise by His Majesty of any powers vested in him with respect to the alteration of the boundaries thereof) all territories which were immediately before the first day of April, nineteen hundred and thirty-seven, comprised in India, being territories lying to the east of Bengal, the State of Manipur, Assam and any tribal areas connected with Assam, and the expression 'British Burma' means so much of Burma as belongs to His Majesty.

(21-B) The expressions 'tribal areas' and 'Ruler' have for the purposes of the foregoing definitions, the same meanings as they have in the Government of India Act, 1935";

in paragraph (23-A) after the words "of British India" there shall be inserted the words "of British Burma";

in paragraph (24) for the words "or India" there shall be substituted the words "India or Burma";

in paragraph (30) the words from the beginning to "chief court and" shall be omitted;

in paragraph (33) after the word "India" there shall be inserted the words "or Burma"; and

in paragraph (35) after the word "India" there shall be inserted the word "Burma".

(b) *Adaptations of the Army Act.*

In section one hundred and seventy-five,—in paragraph (7) after the words "native of India" there shall be inserted the words "or Burma" and after the word "to Indian military law" there shall be inserted the words "or, as the case may be, to Burma military law, but in either case"; and in paragraph (11) after the word "India" there shall be inserted the word "Burma."

In section one hundred and seventy-six,—in paragraph (8-A) after the word "India" there shall be inserted the word "Burma"; in paragraph (10) after the words "Indian military law" in the first place where those words occur there shall be inserted the words "or consisting partly of His Majesty's Burma forces subject to Burma military law"; after the words "natives of India" there shall be inserted the words "or as the case may be, natives of Burma", and at the end of the paragraph there shall be added the words "or as the case may be, to Burma military law."

In section one hundred and eighty, for sub-S. (2) the following sub-section shall be substituted:—

"(2) In the application of this Act to His Majesty's Indian forces and His Majesty's Burma forces (hereafter in this section referred to is the Indian forces and the Burma forces respectively) the following modifications shall be made:—

(*a*) nothing in this Act shall prejudice or affect the Indian military law respecting officers or soldiers belonging to or followers in the Indian forces, being natives of India, or the Burma military law respecting officers or soldiers belonging to or followers in the Burma forces, being natives of Burma, and on the trial of all offences committed by any such officer, soldier or follower reference shall be had to the Indian military law or, as the case may be, the Burma military law for such officers, soldiers or followers, and to the established usages of the service, but courts martial for such trials may be convened in pursuance of this Act;

(*b*) Indian military law or, as the case may be, Burma military law shall extend to such officers, soldiers and followers as aforesaid wherever they are serving;

(*c*) the Governor-General of India may suspend the proceedings of any court martial held in India on an officer or soldier belonging to the Indian forces or to the Burma forces, and the Governor of Burma may suspend the proceedings of any court martial held in Burma on any such officer or soldier;

(*d*) an officer belonging to the Indian forces who thinks himself wronged by his commanding officer and on due application made to him does not receive the re-dress to which he considers himself entitled may complain to the Governor-General of India, who shall cause his complaint to be enquired into and if so desired by the officer shall make a report through the Secretary of State to His Majesty in order to receive the directions of His Majesty thereon;

(*e*) a court martial or, where the case is dealt with summarily under the provisions of this Act the authority having power so to deal with the case may sentence an officer belonging to the Indian forces to forfeit all or any part of his service for the purposes of promotion and, in addition, if the court or authority thinks fit, to be severely reprimanded or reprimanded;

(*f*) the Governor-General of India in the case of the Indian forces, and the Governor of Burma in the case of the Burma forces, may reduce any warrant officer to a lower grade of warrant rank, or may remand any such warrant officer to regimental duty in the regimental rank held by him immediately before his appointment to be a warrant officer;

(*g*) the provisions of this Act relating to warrant officers shall apply to hospital apprentices in India or Burma although not appointed by warrant;

(*h*) Part II of this Act shall not apply to the Indian forces or the Burma forces, but persons may be enlisted and attested in India or Burma for medical service or for other special service in the Indian forces or the Burma forces for such periods, by such persons and in such manner as may be from time to time authorised by the Governor-General or the Governor of Burma."

In section one hundred and ninety,—in paragraph (8) for the words "and His Majesty's Indian forces" there shall be substituted the words "His Majesty's Indian forces and His Majesty's Burma forces."

For paragraph (22) there shall be substituted the following paragraph:—

"(22) The expressions 'native of India' and 'native of Burma' mean respectively a person triable and punishable under Indian military law or Burma military law."

(c) *Adaptations of the Air Force Act.*

In section one hundred and seventy-five,—in paragraph (11-a) after the words "in India" there shall be inserted the words "or Burma"; after the words "outside India" there shall be inserted the words "or, as the case may be, outside Burma", and after the words "of India" there shall be inserted the words "or, as the case may be, by the Air Council and the Governor of Burma."

In section one hundred and seventy-six,—in paragraph (8-a) after the words "in India" there shall be inserted the words "or Burma"; after the words "outside India" there shall be inserted the words "or, as the case may be, outside Burma", and after the words "of India" there shall be inserted the words "or, as the case may be, by the Air Council and the Governor of Burma."

In section one hundred and eighty-four B, after the words "in India" there shall be inserted the words "or Burma", and after the words "of India" there shall be inserted the words "or, as the case may be, by the Air Council and the Governor of Burma."

PART IV.

Enactments relating to Indian Railways.

The Indian Guaranteed Railways Act, 1879.

(42 & 43 Vict., c. 41.)

In section one, after the words "the Secretary of State for India in Council" (where those words first occur) there shall be inserted the words "the Federal Railway Authority or any Government in British India"; after those words in the second place where they occur, there shall be inserted the words "or any Government in British India"; the words and belonging to the Secretary of State for India in Council, or" and the words "belonging

or" in both places where they occur) shall be omitted; and at the end of the section there shall be added the following paragraphs:—

"The term 'the General Controlling Authority' means, in relation to a Federal Railway, the Federal Railway Authority, in relation to a minor railway, the Provincial Government, and in relation to an Indian State Railway, the Governor-General acting in his discretion";

The terms 'Federal Railway', 'Indian State Railway', 'minor railway' and 'Federal Railway Authority' have the meanings respectively assigned to them in the Government of India Act, 1935, except that, as respects the period before the establishment of the Federal Railway Authority, the term "Federal Railway Authority" means "the Governor-General."

In section two, for the words "the Secretary of State for India in Council", where they first occur, there shall be substituted the words "the Federal Railway Authority or any Government in British India"; for the words "with the sanction of the Secretary of State for India in Council" there shall be substituted the words "with the sanction of the General Controlling Authorities of all the railways concerned."

In section three, for the words "the Secretary of State for India in Council" the words "the Secretary of State", and "the Secretary of State in Council" wherever they occur there shall be substituted the words "the Governor-General".

In section four, for the words "with the sanction of the Secretary of State for India in Council" there shall be substituted the words "with the sanction of the General Controlling Authority"; for the words "with the Secretary of State for India in Council" there shall be substituted the words "with the Federal Railway Authority or any Government in British India"; and for the words "by laws and regulations made by the Governor-General in Council" there shall be substituted the words "by or under the law in force in British India."

Section five shall be omitted.

The East India Unclaimed Stock Act, 1885.

(48 & 49 Vict. c. 25.)

At the end of section twenty-two there shall be added the following paragraph:—

"The powers conferred by this section on the Secretary of State (including the power to make regulations) shall, after the coming into force of section one hundred and ninety-nine of the Government of India Act, 1935, instead of being exercised by the Secretary of State, be exercised in accordance with the provisions of that section."

In section twenty-three for the words "the Secretary of State" there shall be substituted the words "the Governor-General."

The Indian Railways Act, 1894.

(57 & 58 Vict. c. 12.)

In section two, after the words "the expression 'the Secretary of State' means" there shall be inserted the words "as respects the period before the commencement of Part III of the Government of India Act, 1935."

Private Railway Acts.

Any power conferred by any Private Act on a Railway Company to make and carry out contracts with the Secretary of State in Council shall be

deemed to include a power to make and carry out contracts with the Federal Railway Authority (as defined in the Indian Guaranteed Railways Act, 1879) or any Government in British India for the like purposes; references in any Private Act relating to railways in India to the Secretary of State in Council in relation to contracts or anything to be done in relation to contracts shall, where the context and the circumstances so admit or require, be construed as including references to that Authority or any such Government; any provision in any such Act requiring the previous sanction of the Secretary of State in Council to the payment of any portion of the remuneration of a director of a railway company as part of the working expenses of the company shall be construed as requiring the previous sanction of the Governor-General thereto; and any provision in any such Act vesting any property in the Secretary of State in Council shall be construed as having vested that property in His Majesty for the purposes of the Government of India.

General and Private Railway Acts.

So much of any enactment relating to railways in India, whether contained in a Public General Act or a Private Act, as directs the Secretary of State in Council to hold unclaimed money subject to the claims of persons entitled thereto or authorises him to apply such moneys as part of revenues of India, or to apply them as part of the revenues of India or otherwise as he thinks fit, shall be construed as requiring the Secretary of State to treat such moneys (subject to any claims which may be established thereto in accordance with the relevant enactments) as part of the revenues of the Governor-General in Council or, after the establishment of the Federation of India, as part of the revenues of the Federation.

APPENDIX L.

THE GOVERNMENT OF INDIA (ADAPTATION OF INDIAN LAWS) ORDER, 1937.

AT THE COURT AT BUCKINGHAM PALACE.

The 18th day of March, 1937.

PRESENT:

The King's most Excellent Majesty in Council.

WHEREAS by section two hundred and ninety-three of the Government of India Act, 1935 (hereafter in the recitals to this order referred to as "the Act" His Majesty is empowered by order in Council to provide that as from such date as may be specified in the order any law in force in British India or in any part of British India shall, until repealed or amended by a competent legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions of the Act.

AND WHEREAS a draft of this order has been laid beforse Parliament in accordance with the provisions of sub-S. (1) of section three hundred and nine of the Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an order may be made in the terms of this order:

NOW THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered, as follows:—

1. This order may be cited as "THE GOVERNMENT OF INDIA (ADAPTATION OF INDIAN LAWS) ORDER, 1937," and shall come into operation on the first day of April, nineteen hundred and thirty-seven.

2. (1) In this order the expression "Indian law" means a law as defined in section two hundred and ninety-three of the Act.

(2) The Interpretation Act, 1889, applies for the interpretation of this order as it applies for the interpretation of an Act of Parliament.

3. The Indian laws mentioned in the Schedules to this order shall, until repealed or amended by a competent Legislature or

other competent authority, have effect subject to the adaptations and modifications directed by those Schedules to be made therein or, if it is so directed, shall cease to have effect.

4. (1) Whenever an expression mentioned in the first column of the table hereinunder printed occurs (otherwise than in a title or preamble or in a citation or description of an enactment) in a Central or Provincial Act or Regulation, whether an Act or Regulation mentioned in the Schedules to this order or not, then, unless that expression is by this order expressly directed to be otherwise adapted or modified, or to stand unmodified or to be omitted, there shall be substituted therefor the expression set opposite to it in column two of the said table.

Table of General Adaptations.

1.	2
Governor-General of India in Council: Governor-General of India: Governor-General in Council; Governor-General: Government of India.	Central Government.
Governor in Council: Governor (except in the expression "Governor's Province"): Lieutenant-Governor in Council: Lieutenant-Governor: Chief Commissioner (except in the expression "Chief Commissioner's Province"): Local Government; Local Administration.	Provincial Government.
Gazette of India: local official Gazette: local gazette: any other expression denoting a gazette in which official notices of a Govment are published, not being the gazette of a district or other sub-division of a Province.	Official Gazette.

Any reference to the Governor (*or* Lieutenant-Governor) of a named Province in Council shall be treated for the purposes of this paragraph as if it were a reference to the Governor (or Lieutenant-Governor) in Council of that Province.

(2) A direction in the Schedules to this order that a specified Indian law or section or portion of an Indian law shall stand unmodified shall be construed merely as a direction that it is not to be modified or adapted in accordance with the foregoing provisions of this paragraph.

5. (1) Where this order requires that in any specified Indian law, or in any section or other portion of an Indian law, certain words shall be substituted for certain other words or that certain words shall be omitted, that substitution or omission, as the case may be, shall, except where it is otherwise expressly provided, be made wherever the words referred to occur in that law or, as the case may be, in that section or portion.

(2) Where this Order requires that in any Indian law a plural noun shall be substituted for a singular noun or *vice versa*, or a masculine noun for a neuter noun or *vice versa*, there shall be made also in any verb or pronoun in the sentence in question such consequential amendment as the rules of grammar may require.

6. (1) The following provisions shall have effect where any Indian law which under this Order is to be adapted or modified has before the commencement of this Order been amended, either generally or in relation to any particular area, by the insertion or omission of words, or the substitution of words for other words—

(*a*) effect shall first be given in the amending law to any adaptation or modification required by paragraphs three and five of this order to be made therein;

(*b*) the original law shall then be amended, either generally or, as the case may be, in its application to the particular area, so as to give effect to the directions contained in the amending law or, where any adaptation or modification has fallen to be made under sub-paragraph (*a*), in that law as so adapted or modified; and

(*c*) all adaptations or modifications required by this order to be made in the original law shall then be made in that law as so amended, except so far as in the case of any particular area they may be inapplicable.

(2) In this paragraph references to the amendment of a law by the insertion or omission of words or the substitution of words do not include references to an amendment which is effected merely by directing that certain words shall be construed in a particular manner.

7. Subject to the foregoing provisions of this order, any reference by whatever form of words in any Indian law in force immediately before the commencement of this order to an authority competent at the date of the passing of that law to exercise any powers or authorities, or discharge any functions, in any part

of British India shall, where a corresponding new authority has been constituted by or under any Part of the Government of India Act, 1935, for the time being in force, have effect until duly repealed or amended as if it were a reference to that new authority.

8. In any Indian law in force immediately before the commencement of this order any reference by name or description to any territory shall, unless the contrary intention appears or unless it has been, or is by this order, otherwise expressly provided, be construed as a reference to the territory which bore that name or answered to that description at the date when the enactment containing that name or description came into operation:

Provided that in the application of any enactment to Madras, Bombay, Bihar or the Central Provinces, references in that enactment to Madras, Bombay, Bihar or the Central Provinces, as the case may be, shall be construed as exclusive of so much of those Provinces respectively as was separated therefrom on the constitution of the Provinces of Orissa and Sind.

9. The provisions of this order which adapt or modify Indian laws so as to alter the manner in which, the authority by which, or the law under or in accordance with which, any powers are exercisable, shall not render invalid any notification, order, commitment, attachment, bye-law, rule or regulation duly made or issued, or anything duly done, before the commencement of this order; and any such notification, order, commitment, attachment, bye-law, rule, regulation or thing may be revoked, varied or undone in the like manner, to the like extent and in the like circumstances as if it had been made, issued or done after the commencement of this order by the competent authority and under and in accordance with the provisions then applicable to such a case.

10. Save as provided by this order, all powers which under any law in force in British India, or in any part of British India, were immediately before the commencement of Part III of the Government of India Act, 1935, vested in, or exercisable by, any person or authority shall continue to be so vested or exercisable until other provision is made by some legislature or authority empowered to regulate the matter in question.

11. Nothing in this order shall affect the previous operation of, or anything duly done or suffered under, any Indian law, or

any right, privilege, obligation or liability already acquired, accrued or incurred under any such law, or any penalty, forfeiture or punishment incurred in respect of any offence already committed against any such law.

12. For the avoidance of doubt it is hereby declared that—

(*a*) nothing in this Order transferring or assigning any functions to the Central Government shall be construed as excluding those functions from the operation of section one hundred and twenty-three or section one hundred and twenty-four of the Government of India Act, 1935;

(*b*) the transfer by this order to a Provincial Government of any jurisdiction theretofore exercisable by the Local Government of the Province shall not be construed as excluding that jurisdiction from the operation of sub-S. (2) of section two hundred and ninety-six of the said Act;

(*c*) nothing in this order shall affect the provisions of any order in Council for the time being in force made under section one hundred and fifty-eight, section one hundred and fifty-nine or section one hundred and sixty of the said Act (which empower Orders to be made regulating the relations of India and Burma as to their monetary systems, relief from double taxation, customs, and ancillary and related matters), or under any corresponding provisions in the Government of Burma Act, 1935; and

(*d*) no repeal effected by this order shall affect the operation of sub-paragraph (2) of paragraph fifteen of the Government of India (Commencement and Transitory Provisions) Order, 1936.

M. P. A. Hankey.

(Schedule Omitted.)

ADDITIONS AND CORRECTIONS.

PAGE.	Line.	Corrections.
1	17	*for* ' The ' *read* ' This.'
9	12	*for* ' it has ' *read* ' Courts have '
15	8 & 9	*for* ' definition of words ' *read* ' analogies drawn '
21	9	*for* ' S. 12 ' *read* ' Cl. 12 '
21	21	*after* the word ' the ' *add* 'meaning of the'
43	19	*for* ' they ' read ' such Acts '
51		In the present heading of the Chapter *after* the word ' custom ' *add* ' usage or practice.' As pointed out in Halsbury's Laws of England, Vol. 10, page 219, ' the word ' custom ' will be found to have been used by the highest legal authorities to denote habits and usages not conforming to the essentials ' required by the strict legal definition or meaning of that word though in its technical sense it denotes exclusively an immemorial custom.
58	12	*for* ' carge ' *read* ' charge '
58	19	*for* ' the (*a*) well-recognised ' *read* ' (*a*) the well-recognised '
59	last line	*between* ' character ' and ' overlooked ' *insert* ' ought not to be.'
60	29	*between* ' Murray's' and ' Johnson's ' *insert* ' and '
61	25	*for* ' it is ' at the two places *substitute* ' they are '
61	29	*after* ' correct meaning ' *add* ' of a word '
62	1	*add* ' with ' at the end of the 1st line
62	27	*for* ' it ' *read* ' such jurisdiction '
63	13	at the end *add* ' of the Limitation Act '
66	27	*after* the word ' Offices ' *add* 'occurring after Chapter II referring to High Courts '

Page.	Line.	Corrections.
69	15	*for* ' land ' *read* ' land ' '
85	27	*for* ' it ' *read* ' the order '
93	1	*for* ' it ' *read* ' procedure '
93	2	*for* ' section ' *read* ' selection '
96	4	*for* ' XIII ' *read* ' III.'
133	18	*for* ' divest of ' *read* ' divest itself of '
153	21	*for* ' could ' *read* 'can '
161, 163, 165, & 167		in the top heading *for* the word ' interpretation ' *substitute* ' International.'
164	4	*for* ' it ' *read* ' such adjudication '
171	2	*for* ' penal statutes ' *read* ' a penal statute '
171	14 & 15	*for* ' its language ' *read* ' language of a statute '
172	24	*insert* ' more ' *between* ' any ' and ' to '
174	11	*for* ' it ' read ' its absence '
174	13	*for* ' require ' *read* ' requires '
177	11	*for* ' was ' *read* ' were '
177	14	*insert* ' it ' *between* ' shut ' and ' was '
177	15	*insert* ' not ' *between* ' were ' and 'taken '
179	23	*for* ' of ' *read* ' or '
181	20	*for* ' being ' *read* ' was '
181	21	*after* ' justice ' *add* ' and the same.'
182	10	*between* ' of ' and ' rising ' *add* ' imprisonment till the '
185	9	*for* ' status ' *read* ' statute '
189	13	*omit* ' that '
189	22	*for* ' proposition ' *read* ' propositions.'
191	15	*for* ' Act of 1919 ' *read* ' Act of 1918.'
192	1	*for* ' in ' *read* ' on '
194	4	*for* ' enabled ' *read* ' able '
194	11	*for* ' obtained ' *read* ' made '
196	3	*for* ' of ' *read* ' from '
197	11	*for* ' earlier Limitation Act ' *read* ' Bengal Act '
197	15	*add* ' shall be ' *before* ' applied '
201	15	*for* ' Chief ' *read* ' chief '
211	3	*for* ' owning ' *read* ' owing.'

Page.	Line.	Corrections.
214	22	*for* 'Justice Varadachari' *read* 'Justice Varadachariar.'.
215	14	*after* 'forfeiture' *add* 'e.g.'
227	29	*for* 'state' *read* 'stage'
244	4	*for* 'they' *read* 'statutes'
248	19	*omit* 'and'
259	27	*for* 'results' *read* 'a result'
264	16	*read* 'Varadachariar J.' *for* 'Varadachari, J.'
266	5	*for* 'from' *read* 'for'
266	7	*for* 'these' *read* 'those'
274	24	*for* 'it is' *read* 'They are'
275	10	*for* 'it' *read* 'a person or body'
305	14	*omit* 'of' at the end of the line.
306	20	*for* 'judgment-debtor' *read* 'debtor'
311	21	*between* 'day' and 'on' *add* 'preceding that'
314	10	*omit* 'both having been'
315	7	*for* 'its' *read* 'their'
315	19	*after* 'to' *add* 'past and'
345	24	*for* 'same' *read* 'latter'
347	22	*for* '18-2-37' *read* '18-12-37'
353	2	*for* 'it' *read* 'The Crown'
356	10	*for* 'same' *read* 'state law'
375	5	*for* 'chellenges' *read* 'challenges'
378	17	*for* 'Act' *read* 'act'

PAGE 140 : Foot note 11, *add* the following.—

The words 'any act done or purporting to be done in the execution of his duty' were considered in a recent case by the Federal Court of India in *Hori Ram* v. *Emperor*, A.I.R. 1939 F.C. 43, in construing S. 270 (1) of the Government of India Act, 1935. In that case Dr. Hori Ram Sing, a Sub Assistant Surgeon in the Punjab Provincial Subordinate Medical service in charge of a rural hospital was suspected of dishonestly removing to his own quarters certain medicines belonging to the hospital at a time when he was under orders of transfer and was arranging to hand over charge to his successor. He was charged of offences under S. 409 and S. 477-A, Criminal Procedure Code and the question that

fell to be considered by their Lordships was whether the acts complained of were acts done or purporting to be done by him in the execution of his duty on the determination of which depended the necessity or otherwise of the consent of the Governor as a condition precedent to the launching of the Prosecution. His Lordship Justice Varadachariar in considering the test to be applied in determining the matter pointed out there could be no hard and fast rule and the decisions were by no means uniform. His Lordship classified the case law under S. 197, Criminal Procedure Code which contained similar language though not exactly the same language as falling mainly into three groups. In the first group of cases it was insisted that there should be something in the nature of the act complained of that attached it to the official character of the person doing it, vide : In re, *Sheik Abdul Khadir Saheb*, A.I.R. 1917 Mad. 344=33 I.C. 648=17 Cr.L.J. 168 ; *Raja Rao* v. *Ramaswamy*, A.I.R. 1927 Mad. 566=102 I.C. 347=50 Mad. 754=52 M.L.J. 647 ; *Amarat Ali* v. *Emperor*, A.I.R. 1929 Cal. 724=122 I.C. 627=33 C.W.N. 1058 ; *King Emperor* v. *Maung Bo Maung*, A.I.R. 1935 Rang. 263=13 Rang. 540 (F.B.) ; *Gurushiddayya Shanti Virayya* v. *Emperor*, A.I.R. 1939 Bom. 63=I.L.R. 1939 Bom. 119=40 Bom. L.R. 1286 all quoted in A.I.R. 1939 F.C. 43. In the second group importance was attached to the circumstance that the official character or status of the accused gave him the opportunity to commit the offence. In the third group stress was laid almost exclusively on the fact that it was ' at a time when the accused was engaged in his official duty' that the alleged offence was said to have been committed ; *Gangaraju* v. *Venki*, A.I.R. 1929 Mad. 659=52 Mad. 602=57 M.L.J. 31. The first was the correct test. The third test which referred to the time factor was no doubt one to be taken into account but it was not a conclusive or sole test. As was pointed out by his Lordship with reference to Dr. Hori Ram's case ' if a medical officer while on duty in the hospital is alleged to have committed rape on one of the patients or to have stolen a jewel from the patient's person it is difficult to believe that it was the intention of the Legislature that he could not be prosecuted for such offences except with the previous sanction of the Local Government.' It might be that some acts may be apparently connected in relation to time and opportunity and yet one of the acts may be official but not the other. Thus the confinement of person suspected to have committed murder and the torture inflict-

ed on them for the extortion of a confession might both be committed in the same transaction but sanction under S. 197 Criminal Procedure Code is required for the offence of wrongful confinement for the purpose of extorting confession (S. 348) but not for the offence of voluntarily causing hurt or torture to extort confession (S. 330, I. P. Code). (See *Ganapati Goundan* v. *King Emperor*, A.I.R. 1932 Mad. 214=62 M.L.J. 223). Again notice under S. 80 of the Civil Procedure Code is required for an action for damages for wrongful arrest but not for the recovery of the amount actually extorted by a police officer from a trader for in the latter case it could not be supposed that the police officer was acting in his official capacity in demanding and obtaining the amount extorted *Dakshina Ranjan* v. *Omar Chand*, 1924 Cal. 145=75 I.C. 173=50 Cal. 992=38 C.L.J. 104=28 C.W.N. 10.

On the same grounds the Federal Court in the case above referred to *Dr. Hori Ram Sing* v. *Emperor*, held that while the sanction of the Governor was necessary for the offence under S. 477-A it was not necessary for one under S. 409, I. P. Code. In the former case there is a duty cast on the accused of maintaining an account and in falsifying it he professes to discharge his official duty of maintaining a register.

PAGE 407 : In continuation of foot-note (4) *add* the following :—

The Bihar Money Lenders (Regulation of Transactions) Act (VII of 1939) was the subject of judicial consideration by the Federal Court of India in a number of appeals the judgments in all of which were pronounced in March, 1940. The main points decided by those appeals may be summarised thus :—

(*i*) The validity of Act VII of 1939 cannot be challenged as it had been reserved for the consideration of the Governor-General and had obtained his assent.

(*ii*) A High Court has no power to vacate a certificate granted by it under s. 205 of the Government of India Act, either under s. 151 or 152 of the Civil Procedure Code.

(*iii*) Jurisdiction once vested in the Federal Court by the grant of a Certificate, ' the key which unlocks the door into Federal Court,' cannot be divested by the happening of subsequent events (including the passing of legislation with retrospective effect) and

an appellant can after obtaining a certificate appeal on any ground whatsoever if the Court grants him leave to do so. The jurisdiction would not be excluded even if the appellant declines to argue the precise constitutional question with reference to which the certificate was granted. *Subhananda* v. *Apurba Krishna*, A.I.R. 1940 F.C. 7.

(*iv*) Certificate involving a question of the validity of a Provincial Act does not become void by the repeal of the Act or by its replacement by a new Act.

(*v*) An appellant can be permitted to raise in the Federal Court an argument based on a new Act [such as the Bihar Money-Lenders (Regulation of Transactions) Act VII of 1939] even though the same was not taken before the High Court even after the Act had come into force. In such cases it is really the Court that takes cognizance of the new Act to do justice between the parties.

(*vi*) The term 'loan' under Act VII of 1939 is a wider word than the word 'principal' or the amount actually lent and can signify an advance in cash or kind or a transaction on a bond bearing interest executed in respect of past liability or a transaction which is substantially a loan.

(*vii*) The word 'bond' under the same Act should be understood in the sense in which it is understood in India especially with reference to the definitions in the Indian Acts and not in the wider sense so as to include accounts stated, adjustments or acknowledgments. An express obligation undertaken by the executant to pay or deliver goods is essential for an instrument being brought under the description of 'bond.' *Surendra Prasad* v. *Gajadhar Prasad*, A.I.R. 1940 F.C. 10.

(*viii*) Under s. 7 of Act VII of 1939 where a creditor sues one of several executants who has taken a loan mentioned in or evidenced by a document the amount due from him alone and not the whole loan should be taken to be the subject-matter of the claim for the purposes of the Act as any other construction would frustrate the object the legislature had in view. *Birendra Prasad* v. *Surendra Prasad*, A.I.R. 1940 F.C. 19.

(*ix*) Except in cases where the High Court fails to apply its mind at all to a matter, or acts capriciously or in disregard of a legal principle, the Federal Court cannot interfere with the way

in which discretion is exercised by the High Court and the Federal Court would not substitute its discretion for that of the High Court.

(*x*) Where the word 'may' occurs in the opening portion of a section and the word 'shall' in the proviso, the two words must have different meanings. So also where the Legislature has advisedly used 'may' in some sections, and 'shall' in others, the use of the word 'may' indicates that the Court is not bound to exercise one or any of the powers conferred upon it.

(*xi*) It may not be in harmony with the policy of Act VII of 1939 (Bihar) to go back to the old practice or the old standard of high rates of interest which were freely allowed. *Jaigobind Sing* v. *Lachmi Narain*, A.I.R. 1940 F.C. 20.

(*xii*) A Federal Court would not exercise for the first time a discretion which the High Court could have been asked to exercise but was not asked to exercise under s. 12 of the earlier Bihar Money Lenders Act (III of 1938). *Prithichand* v. *Sukhraj Rai*, A.I.R. 1940 F.C. 25.

(*xiii*) 'Rules of the Court are framed to be kept and not to be broken; but they are framed for the purpose of assisting justice and not for enabling it to be defeated. If therefore a strict adherence to the rules is likely to deprive a litigant of advantages which the Provincial Legislature clearly intended to give him, then in my opinion the Court may properly exercise the dispensing power conferred by O. 37 in order that substantial justice may be done'. *Per* Gwyer, C.J., in *Lachmeswar* v. *Girdharilal*, A.I.R. 1940 F.C. 26 at 27.

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